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11 and Defendants/Counterclaim Plaintiffs

12 United Healthcare Services, Inc., UnitedHealthcare

Insurance Company; OptumInsight, Inc.

13 UNITED STATES DISTRICT COURT

14 CENTRAL DISTRICT OF CALIFORNIA

15 ALMONT AMBULATORY SURGERY

16 CENTER, LLC, a California limited liability

17 company; BAKERSFIELD SURGERY

18 INSTITUTE, LLC, a California limited

19 liability company; INDEPENDENT

20 MEDICAL SERVICES, INC., a California

21 corporation; MODERN INSTITUTE OF

22 PLASTIC SURGERY & ANTIAGING, INC.,

23 a California corporation; NEW LIFE

24 SURGERY CENTER, LLC, a California

25 limited liability company, dba BEVERLY

26 HILLS SURGERY CENTER, LLC;

27 ORANGE GROVE SURGERY CENTER,

28 LLC, a California limited liability company;

SAN DIEGO AMBULATORY SURGERY

CENTER, LLC, a California limited liability

company; SKIN CANCER &

RECONSTRUCTIVE SURGERY

SPECIALISTS OF BEVERLY HILLS, INC.,

a California corporation; VALENCIA

AMBULATORY SURGERY CENTER,

LLC, a California limited liability company;

WEST HILLS SURGERY CENTER, LLC, a

California limited liability company,

PLAINTIFFS,

Case No 2:14-cv-03053-MWF(VBKx)

COUNTERCLAIM

(Superior Court of the State of
California, County of Los Angeles,
Central District Case Number:
BC540056)

Complaint filed: March 21, 2014

1 v.

2 UNITEDHEALTH GROUP, INC.; UNITED
3 HEALTHCARE SERVICES, INC.,
4 UNITEDHEALTHCARE INSURANCE
COMPANY; OPTUMINSIGHT, INC., AND
DOES 1 THROUGH 20,

5 Defendants.

6
7
8 UNITED HEALTHCARE SERVICES,
9 INC.; UNITEDHEALTHCARE
INSURANCE COMPANY;
OPTUMINSIGHT, INC.,

10 Counterclaim Plaintiffs,

11 v.

12 ALMONT AMBULATORY SURGERY
13 CENTER, LLC, a California limited liability
14 company; BAKERSFIELD SURGERY
15 INSTITUTE, LLC, a California limited
16 liability company; INDEPENDENT
17 MEDICAL SERVICES, INC., a California
18 corporation; MODERN INSTITUTE OF
19 PLASTIC SURGERY & ANTIAGING,
20 INC., a California corporation; NEW LIFE
21 SURGERY CENTER, LLC, a California
22 limited liability company, dba BEVERLY
23 HILLS SURGERY CENTER, LLC;
24 ORANGE GROVE SURGERY CENTER,
25 LLC, a California limited liability company;
26 SAN DIEGO AMBULATORY SURGERY
27 CENTER, LLC, a California limited liability
28 company; SKIN CANCER &
RECONSTRUCTIVE SURGERY
SPECIALISTS OF BEVERLY HILLS,
INC., a California corporation; VALENCIA
AMBULATORY SURGERY CENTER,
LLC, a California limited liability company;
WEST HILLS SURGERY CENTER, LLC,
a California limited liability
company; KAMBIZ BENJAMIN OMIDI
(A/K/A JULIAN OMIDI, COMBIZ OMIDI,
KAMBIZ OMIDI, COMBIZ JULIAN
OMIDI, KAMBIZ BENIAMIA OMIDI,
JULIAN C. OMIDI); MICHAEL OMIDI,
M.D.; ALMONT AMBULATORY
SURGERY CENTER, A MEDICAL
CORPORATION; BAKERSFIELD
SURGERY INSTITUTE, INC.; CIRO
SURGERY CENTER, LLC; EAST BAY

1 AMBULATORY SURGERY CENTER,
 2 LLC; SKIN CANCER &
 3 RECONSTRUCTIVE SURGERY
 4 SPECIALISTS OF WEST HILLS, INC.;
 5 VALLEY SURGICAL CENTER, LLC;
 6 TOP SURGEONS, INC.; TOP SURGEONS,
 7 LLC; PALMDALE AMBULATORY
 8 SURGERY CENTER, A MEDICAL
 9 CORPORATION; 1 800 GET THIN, LLC;
 10 DOES 1-200,

11 Counterclaim Defendants.

12 Counterclaim Plaintiffs UNITED HEALTHCARE SERVICES, INC.,
 13 UNITED HEALTHCARE INSURANCE COMPANY, AND OPTUMINSIGHT,
 14 INC., (collectively "United") allege, upon personal knowledge and upon
 15 information and belief, as follows:

16 SUMMARY OF ACTION

17 1. United seeks to recover millions of dollars paid to brothers Julian and
 18 Michael Omid through their 1-800-GET-THIN referral network and their network
 19 of ambulatory surgical centers as a result of their unlawful scheme and artifice to
 20 defraud United and to illegally enrich themselves through false and fraudulent
 21 pretenses, representations, and promises.

22 2. For years, the Omidis and their network of corporations and business
 23 entities have illegally conspired to induce patients who were participants in health
 24 plans insured or administered by United to obtain medical services by illegally
 25 promising to waive copayments, coinsurance, and other participant financial
 26 obligations for their out-of-network services. These standard forms of patient
 27 responsibility, which operate as a check on out-of-network providers that do not
 28 have rate contracts with the insurance company, are a predicate to a health plan's
 responsibility to cover any benefit—if a provider waives the patient's responsibility
 to pay his share, the patient's insurer likewise bears no responsibility. The Omidis
 and their network promised on a routine basis that they would accept, as payment in
 full, whatever amount a patient's insurance paid—removing any stake that the

1 patient may have in ensuring the care is medically appropriate, necessary, and cost-
2 effective.

3 3. Because health benefit plans generally exclude from coverage medical
4 services where the provider has waived any co-pays, coinsurance, or other patient
5 financial obligations, this scheme induced United to approve claims that were
6 invalid under the terms of the Plan. The scheme also resulted in higher utilization
7 of costly out-of-network health services, as patients were induced into either
8 receiving treatments for services that they otherwise would not have sought had
9 they been obligated to pay co-pays, deductibles, or co-insurance. Further, patients
10 who would have nevertheless elected to receive treatment despite the cost, would
11 likely have received such care in lower cost in-network facilities, with whom
12 United had contracts limiting the amount such providers could charge for these
13 services.

14 4. Furthermore, after inducing patients to undergo medical treatments at
15 their clinics by promising free services, the Omidis and their network of surgical
16 centers conspired to submit fraudulent claims to induce United to pay for Lap Band
17 services that were not covered by insurance. For example, through their Beverly
18 Hills Surgery Center clinic, the Omidis manufactured a reason to perform hernia
19 surgeries only after requests for Lap Band surgeries were denied, and then received
20 payment for Lap Band surgeries that were not covered by insurance by disguising
21 the surgery as hernia repair on claims submitted to United. In other instances,
22 Counterclaim Defendants fraudulently manipulated the reported height and weight
23 of United members in an attempt to ensure that they qualified for Lap Band surgery
24 under the terms of their respective health benefit plans.

25 5. United therefore seeks damages on behalf of itself (as insurer) and the
26 health benefit plans for sums fraudulently or erroneously paid to the Counterclaim
27 Defendants as a result of their fraudulent scheme. United also seeks injunctive
28 relief to stop Counterclaim Defendants from continuing their wrongful conduct, as

1 well as a declaration that any unpaid claims submitted by Counterclaim Defendants
 2 that arose out of the fraudulent or illegal practices are not payable, and injunctive
 3 relief precluding the Counterclaim Defendants from profiting from their promise to
 4 induce participants into receiving care by promising to waive co-pays, co-insurance
 5 and other forms of patient responsibility in return for the United members' decision
 6 to obtain services.

7 **PARTIES**

8 **I. United**

9 6. Counterclaim Plaintiff UNITED HEALTHCARE SERVICES, INC. is
 10 a Minnesota Corporation with its principal place of business in Minnetonka,
 11 Minnesota.

12 7. Counterclaim Plaintiff UNITEDHEALTHCARE INSURANCE
 13 COMPANY is a Connecticut Corporation with its principal place of business in
 14 Hartford, Connecticut.

15 8. Counterclaim Plaintiff OPTUMINSIGHT, INC. is a Delaware
 16 Corporation with its principal place of business in Eden Prairie, Minnesota.

17 **II. Counterclaim Defendants**

18 9. Upon information and believe ALMONT AMBULATORY
 19 SURGERY CENTER, LLC, is a California limited liability company with its
 20 principal place of business in Beverly Hills, California.

21 10. Upon information and belief, ALMONT AMBULATORY SURGERY
 22 CENTER, A MEDICAL CORPORATION, is a California corporation with its
 23 principal place of business in California and is a predecessor to ALMONT
 24 AMBULATORY SURGERY CENTER, LLC. Collectively these entities will be
 25 referred to herein as "Almont ASC."

26 11. Upon information and belief, BAKERSFIELD SURGERY
 27 INSTITUTE, LLC, is a California limited liability company with its principal place
 28 of business in California.

1 12. Upon information and belief, BAKERSFIELD SURGERY
2 INSTITUTE, INC., is a California corporation with its principal place of business
3 in California and is a predecessor to BAKERSFIELD SURGERY INSTITUTE,
4 LLC. Collectively these entities will be referred to herein as “Bakersfield Surgery
5 Center.”

6 13. Upon information and belief, CIRO SURGERY CENTER, LLC, is a
7 California limited liability company with its principal place of business in
8 California.

9 14. Upon information and belief, EAST BAY AMBULATORY
10 SURGERY CENTER, LLC, is a California limited liability company with its
11 principal place of business in California.

12 15. Upon information and belief, INDEPENDENT MEDICAL
13 SERVICES, INC. (hereinafter “Independent Medical Services”), is a California
14 corporation with its principal place of business in California.

15 16. Upon information and belief, MODERN INSTITUTE OF PLASTIC
16 SURGERY & ANTIAGING, INC. (hereinafter “Modern Institute”), is a California
17 corporation with its principal place of business in Beverly Hills, California.

18 17. Upon information and belief, NEW LIFE SURGERY CENTER, LLC
19 (hereinafter “New Life Surgery Center”), is a California limited liability company,
20 d/b/a BEVERLY HILLS SURGERY CENTER, LLC (hereinafter “Beverly Hills
21 Surgery Center”) with its principal place of business in Beverly Hills, California.

22 18. Upon information and belief, ORANGE GROVE SURGERY
23 CENTER, LLC (hereinafter “Orange Grove Surgery Center”) is a California limited
24 liability company with its principal place of business in California.

25 19. Upon information and belief, PALMDALE AMBULATORY
26 SURGERY CENTER, LLC, is a California limited liability corporation with its
27 principal place of business in California.
28

1 20. Upon information and belief, SAN DIEGO AMBULATORY
2 SURGERY CENTER, LLC (hereinafter "San Diego ASC"), is a California limited
3 liability company with its principal place of business in California.

4 21. Upon information and belief, SKIN CANCER &
5 RECONSTRUCTIVE SURGERY SPECIALISTS OF BEVERLY HILLS, LLC, is
6 a California limited liability company with its principal place of business in Beverly
7 Hills, California.

8 22. Upon information and belief, SKIN CANCER &
9 RECONSTRUCTIVE SURGERY SPECIALISTS OF WEST HILLS, INC., is a
10 California corporation with its principal place of business in California and is a
11 predecessor to SKIN CANCER & RECONSTRUCTIVE SURGERY
12 SPECIALISTS OF BEVERLY HILLS, LLC. Collectively these entities will be
13 referred to herein as "Skin Cancer Surgery Specialists."

14 23. Upon information and belief, VALENCIA AMBULATORY
15 SURGERY CENTER, LLC (hereinafter "Valencia ASC"), is a California limited
16 liability company with its principal place of business in California.

17 24. Upon information and belief, VALLEY SURGICAL CENTER, LLC
18 (hereinafter "Valley Surgical Center"), is a California limited liability company,
19 with its principal place of business in California.

20 25. Upon information and belief, WEST HILLS SURGERY CENTER,
21 LLC (hereinafter "West Hills Surgery Center"), is a California limited liability
22 company with its principal place of business in California.

23 26. Upon information and belief, TOP SURGEONS, LLC, is a California
24 limited liability company with its principal place of business in California.

25 27. Upon information and belief, TOP SURGEONS, INC., is a California
26 corporation with its principal place of business in California and is a predecessor to
27 TOP SURGEONS, LLC. Collectively, these entities will be referred to herein as
28 "Top Surgeons."

1 28. Upon information and belief, 1-800-GET-THIN, LLC (“1-800-GET-
2 THIN”), is a California limited liability company with its principal place of
3 business in California.

4 29. KAMBIZ BENJAMIN OMIDI A/K/A JULIAN OMIDI, COMBIZ
5 OMIDI, KAMBIZ OMIDI, COMBIZ JULIAN OMIDI, KAMBIZ BENIAMIA
6 OMIDI, JULIAN C. OMIDI (hereinafter “Julian Omid”) is an individual who,
7 upon information and belief, is a citizen of California. United is further informed
8 and believes that the Medical Board of the State of California revoked Julian
9 Omid’s physician and surgical license on June 19, 2009. Among other things, the
10 Medical Board of the State of California found that Julian Omid (1) “perpetrated a
11 fraud” on the Board by failing to disclose information; (2) committed
12 “misrepresentation and dishonesty . . . go[ing] to the core of his ability to practice
13 his profession”; and (3) has a “penchant for dishonesty, to bend his position and
14 shade his statements to suit his needs, without consistent regard for the truth.”

15 30. MICHAEL OMIDI, M.D. is an individual who, upon information and
16 belief, is a citizen of California. United is informed and believes that Michael
17 Omid holds a current physician and surgical license in the State of California.
18 United is further informed and believes that on June 19, 2008, the State of
19 California revoked Michael Omid’s physician and surgical license, but the
20 revocation was stayed pending successful completion of a three-year probationary
21 period which Michael Omid, upon information and belief, successfully completed.
22 In April 2013, the Medical Board of the State of California formally accused
23 Michael Omid of “repeated acts of negligence in the care and treatment of patient
24 G.B.” These allegations are still pending.

25 31. The true names and capacities, whether individual, corporate, associate
26 or otherwise, of Does 1-200, inclusive, are unknown to United, who therefore sues
27 these parties by such fictitious names. United is informed and believes that each of
28 the entities designated as a Doe is a resident of, or business entity doing business in,

1 the State of California and is responsible in some manner for the events and
 2 happenings referred to herein, and proximately caused injury and damages to
 3 United as hereinafter alleged.

4 32. All of the parties listed in Paragraphs 9-31 above shall be collectively
 5 referred to as the "Counterclaim Defendants." All of the Counterclaim Defendants
 6 acting as a corporation, limited liability company, or other association, including
 7 those referred to in Paragraphs 9-28 shall be referred to collectively as the
 8 "Corporate Counterclaim Defendants."

9 JURISDICTION AND VENUE

10 33. Because several of the counterclaims raised in this matter arise under
 11 federal law, this Court has jurisdiction to hear them under 28 U.S.C. § 1331 and 29
 12 U.S.C. § 1132(e)(1). Further, because the counterclaims arise out of the same
 13 transaction or occurrence that are the subject matter of the Plaintiffs' Complaint,
 14 this Court has jurisdiction over the claims set forth in the counterclaim pursuant
 15 Fed. R. Civ. P. 13 and the supplemental jurisdiction provisions of 28 U.S.C. § 1367.

16 34. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b)
 17 because any or all of the Counterclaim Defendants reside in this judicial district, all
 18 defendants are residents of the State of California, and because a substantial part of
 19 the events or omissions giving rise to the claim occurred in this judicial district.

20 35. Counterclaim Plaintiffs have submitted to personal jurisdiction of this
 21 Court by filing their Counterclaim in this Court.

22 FACTUAL ALLEGATIONS

23 I. United and Its Members

24 36. United is an insurer and third party claims administrator of claims for
 25 employee health benefit plans, which are sponsored by employers and provide
 26 health benefits to their members. The health plans sponsored by private employers
 27 are governed by ERISA, 29 U.S.C. § 1001 *et. seq* (the "ERISA Plans"), while those
 28 sponsored by governmental employers are exempted from ERISA's jurisdiction.

1 United provides insurance and/or administrative services to these employer-
2 sponsored health benefit plans (collectively, the “health benefit plans”), including
3 (depending upon the terms of United’s individual contract) the processing of claims
4 for reimbursement of medical services provided to the individuals covered by these
5 benefit plans (“United members”). For those benefit plans that are insured directly
6 by United (“insured plans”), benefit payments are made from United’s own funds.
7 For those benefit plans for which United acts as a third party claims administrator
8 (“self-funded plans”), benefit payments are made from plan funds provided by the
9 employer-sponsor of the self-funded plans. United’s contractual agreement with
10 the employer-sponsor of such self-funded plans specifically grants United the
11 authority to recover overpayments, including through litigation, on behalf of the
12 self-funded plans.

13 37. The terms of the specific health benefit plan through which a United
14 member is covered determines whether medical services are covered by the plan
15 and thus are reimbursable (“Covered Services”). The plan also determines the
16 extent to which the United member bears responsibility for a portion of the charge
17 through a copayment, coinsurance, deductible amount, or other cost sharing
18 (referred to herein as the “Member Responsibility Amounts”).

19 38. The amount paid by a health benefit plan for Covered Services also
20 depends on whether the services were provided by an in-network or out-of-network
21 provider. In-network providers generally accept a discounted rate from United in
22 exchange for participation in United’s network. Members who choose an in-
23 network provider are generally assured that, for covered services, their
24 responsibility for payment is limited to any applicable copayment, coinsurance and
25 deductible amount provided in their plan. Out-of-network benefits do not include
26 this assurance. Different health benefit plans include different provisions for the
27 rate at which out-of-network services will be reimbursed. For example, some
28 health benefit plans contain a provision limiting the amount they will reimburse

1 out-of-network providers to the usual, customary, and reasonable charges for the
2 services at issue. These health benefit plans generally define such charges to mean
3 the prevailing rate for the procedure in the area and/or the rate generally accepted
4 by providers. In addition to any applicable Member Responsibility Amounts,
5 United will only compensate providers for the amount allowed by the health benefit
6 plan for out-of-network services. The amount allowed for out-of-network services
7 is often referred to as “eligible expenses” or the “allowed amount.”

8 39. Unlike in-network providers, out-of-network providers generally do
9 not have a contract that gives them the right, as providers, to seek payment for their
10 services directly from a member’s health benefit plan, insurer, or claims processor.
11 Instead, out-of-network providers contract with the member to provide medical
12 services for an agreed upon charge. The member then has the right to seek
13 reimbursement from his or her health benefit plan for the eligible expenses incurred
14 by the member for Covered Services, as provided by their specific plan.

15 40. If an out-of-network provider has received a proper assignment of
16 rights from a United member and the member’s health benefit plan does not
17 prohibit such an assignment, generally the provider may seek reimbursement for
18 Covered Services directly from United by submitting a claim form on behalf of the
19 member to United indicating the procedure(s) provided and the amount the provider
20 actually charged the member for these services. United then determines the amount
21 of reimbursement to the provider and the member’s responsibility, if any, by
22 considering, among other things, the services provided, the amount charged to the
23 member, and the health benefit plan’s terms.

24 41. As is customary, upon information and belief, at all relevant times,
25 Counterclaim Defendants utilized either (1) a standard CMS-1500 (formerly
26 HFCA-1500) health insurance claim form that requires providers to describe the
27 services provided to members using a specific Current Procedural Terminology
28

1 code (a “CPT Code”) or (2) a UB-04 (formerly UB-92) form that requires the use of
2 a revenue codes for certain facility services.

3 42. The American Medical Association publishes and licenses an annual
4 compendium of CPT Codes, which has become the standard source for coding
5 procedures for billing purposes in the health care industry. The CPT Code is the
6 standard means for describing the health care services rendered by a provider when
7 it submits a claim for payment to health plans or the federal government.

8 43. Thus, a claim for benefits must include a description of the services
9 provided to the member. Providers describe the services by assigning a CPT Code
10 and/or revenue code to each service rendered. The claim form also includes a
11 representation from the provider of the amount the provider charged to the member
12 for the described services.

13 44. As described in more detail, *infra*, United receives nearly two million
14 health care claims per day and must comply with various state laws and regulations
15 mandating that such claims be paid within a short period of time. By necessity,
16 United must rely in good faith on the veracity of the descriptions of the services
17 rendered as stated on the claims form and the amount of the bills submitted by the
18 provider for each service.

19 **II. The Omidis Exercise Control Over the Counterclaim Defendants’**
20 **Activities to Coordinate Their Scheme to Defraud**

21 45. United is informed and believes that for a number of years, and
22 continuing today, Julian and Michael Omidis (collectively the “Omidis”) operated,
23 either individually or through corporate entities such as Top Surgeons, a network of
24 surgical centers and affiliated health care and service providers, including all of the
25 Counterclaim Defendants in this matter. These entities provided medical and
26 administrative services to United members throughout Southern California. Upon
27 information and belief, the Counterclaim Defendants receive referrals for United
28

1 members who responded to the 1-800-GET-THIN marketing campaign, which is,
2 upon information and belief, operated and controlled by the Omidis.

3 46. United is informed and believes that the Omidis control the activities
4 of all other Counterclaim Defendants in this matter, though their individual actions
5 and their ownership of various corporate entities including Top Surgeons, which,
6 along with a variety of other Counterclaim Defendants, is located at 9001 Wilshire
7 Blvd., Suite 106, Beverly Hills, CA 90211.

8 47. The Omidis have used various corporate entities in order to perpetrate
9 their scheme to defraud United, as set forth below. As an example of the shifting
10 corporate structure that United believes to be pervasive throughout the Omidis
11 enterprise, United is informed and believes that the Omidis operated Counterclaim
12 Defendant Almont ASC at 9001 Wilshire Blvd., Suite 106, Beverly Hills, CA
13 90211 beginning in 2005. After conducting an inspection of Almont ASC's facility
14 in 2009, the United States Department of Health and Human Services (Centers for
15 Medicare & Medicaid Services) uncovered numerous deficiencies including,
16 unsanitary conditions, deficient hiring and training of medical personnel, deficient
17 storage and collection of medical records, and a failure of the facility to assess "the
18 quality of care provided, including the medical necessity of the procedures
19 performed." As a result of these deficiencies, Almont ASC was terminated from
20 the Medicare program. Nonetheless, the Omidis, upon information and belief,
21 continued operating the center at the same address under a new name, Beverly Hills
22 Surgery Center, LLC, a/k/a New Life Surgery Center, LLC. United is further
23 informed and believes that the Omidis have repeatedly used this shifting corporate
24 structure and the various corporate entities controlled by the Omidis, including the
25 Corporate Counterclaim Defendants, to perpetrate their scheme to defraud United
26 to, among other things, evade United's fraud detection activities and induce United
27 to pay claims that would otherwise not have been paid. The identities of many of
28

1 these related entities are not known by United at this time and are named in the
2 Counterclaim as Does 1-200.

3 48. As further evidence of the Omidis' control over the various Corporate
4 Counterclaim Defendants, as well as their integration into a network of cooperating
5 providers, United alleges:

6 a) Based on California Secretary of State records, United is
7 informed and believes that certain Counterclaim Defendant surgical centers,
8 including New Life Surgery Center, Beverly Hills Surgery Center, Orange Grove
9 Surgery Center, San Diego ASC, Valencia ASC, Valley Surgical Center,
10 Independent Medical Services, and West Hills Surgery Center, share a principal
11 executive office at 269 S. Beverly Drive, No. 1409, Beverly Hills, CA 90212.

12 b) United is informed and believes that various Corporate
13 Counterclaim Defendants, including Almont ASC, New Life Surgery Center,
14 Beverly Hills Surgery Center, Skin Cancer Surgery Specialists, and Top Surgeons,
15 conduct medical treatments, including Lap Band surgeries, or other business
16 activities at 9001 Wilshire Blvd., Suite 106, Beverly Hills, CA 90211.

17 c) United is informed and believes that individually or through Top
18 Surgeons, the Omidis executed contracts with various surgeons (including Dr.
19 Brian West and Dr. Ihsan Najib Shamaan), who then performed medical procedures
20 at Counterclaim Defendant surgical centers and affiliated medical providers.

21 d) Michael Omidis is identified on an organizational chart as the
22 head of Independent Medical Services and associated ambulatory surgical centers.

23 e) Based on reports from the Joint Commission, an organization
24 that accredits ambulatory surgical centers, United is informed and believes that the
25 Omidis designated Elliot Alpert as the "owner" of various corporate entities,
26 including Counterclaim Defendant surgical centers New Life Surgery Center d/b/a
27 Beverly Hills Surgery Center, Orange Grove Surgery Center, San Diego ASC,
28 Valencia ASC, Valley Surgical Center, and Bakersfield Surgery Institute. Records

1 also reflect that Dr. Alpert served as a physician at Counterclaim Defendant
2 surgical centers.

3 f) United is informed and believes that the Omidis use these
4 corporate entities and their identifying information, such as Tax Identification
5 Numbers and addresses, interchangeably on insurance claims, business cards,
6 letterhead, invoices, and other documents and records as, among others, to confuse
7 or defraud patients and insurance company payors.

8 g) United is informed and believes that Counterclaim Defendants
9 jointly own, manage, operate, administer, direct, use or control a centralized billing
10 and collections organization that submits medical claims on behalf of Counterclaim
11 Defendant to insurers and claims administrators, including United.

12 h) United is informed and believes that medical claims for patients
13 referenced herein were submitted by Counterclaim Defendants' centralized billing
14 organization on behalf of, among others, Counterclaim Defendants Beverly Hills
15 Surgery Center and Skin Cancer Surgery Specialists which, according to medical
16 and claims records, share a billing and physical address at 9001 Wilshire Blvd.,
17 Suite 106, Beverly Hills, CA 90211.

18 i) United is informed and believes that Araminta Salazar
19 performed billing services for Counterclaim Defendants at relevant times alleged
20 herein. Salazar has testified in other matters that, as part of her duties, she submits
21 medical records and claims "in every case," and that she has performed these same
22 billing services and used the same process for "tens of thousands" of claims and
23 appeals with respect to Counterclaim Defendants, including, but not limited to
24 Independent Medical Services, Modern Institute, Valley Surgical Center, and
25 Orange Grove Surgical Center.

26 j) United is informed and believes that Yesenia F. also performs
27 billing services for Counterclaim Defendants at relevant times alleged herein. As
28 part of her duties, Yesenia F. provided to United accreditation confirmation for

1 certain Counterclaim Defendants, including Modern Institute and New Life Surgery
2 Center d/b/a Beverly Hills Surgery Center.

3 k) United is informed and believes that Counterclaim Defendants
4 regularly commingle insurance funds between each entity's bank accounts. For
5 example, Counterclaim Defendants routinely deposit checks written to Almont
6 ASC, Skin Cancer Surgery Specialists, and Beverly Hills Surgery Specialists into
7 an account owned and controlled by Top Surgeons.

8 l) Based on testimony provided by a surgeon who performed
9 medical services for the Omidis at the Counterclaim Defendants surgical centers,
10 United is informed and believes that the Omidis jointly own, manage, operate,
11 administer, direct, or control a centralized repository or office that houses
12 Defendants' medical and patient records.

13 m) Based on testimony provided by a surgeon who performed
14 medical services for the Omidis at the Counterclaim Defendant surgical centers,
15 United is informed and believes that the Omidis, on behalf of Counterclaim
16 Defendants, jointly own, manage, operate, administer, direct, or control a
17 centralized patient-scheduling organization. United is further informed and
18 believes that physician scheduling requests are routed through either the Omidis or
19 Maria Abaca, Counterclaim Defendants' bariatric program coordinator.

20 n) United is informed and believes that the Omidis jointly manage,
21 administer, direct, or control many of the medical decisions made at Counterclaim
22 Defendant surgical centers. Based on testimony provided by a surgeon who
23 performed medical services for the Omidis at the Counterclaim Defendant surgical
24 centers, United is informed and believes that in furtherance of their control over
25 medical decisions, the Omidis mandate that physicians shall not disclose to patients
26 all known risks associated with surgical procedures such as the gastric Lap Band.
27 United is further informed and believes that the Omidis do not provide all necessary
28

1 or sanitary equipment, tools, or surgical instruments for physician use during many
2 types of procedures at Counterclaim Defendant surgical centers.

3 o) Based on testimony provided by surgeons who performed
4 medical services for the Omidis at the Counterclaim Defendant surgical centers,
5 United is informed and believes that Defendants jointly own, manage, operate,
6 administer, direct, or control a centralized finance and accounting organization.
7 This organization is responsible, in part, for physician payment and reimbursement.

8 p) United is informed and believes that the Omidis exercise control
9 over medical professionals affiliated with the Corporate Counterclaim Defendants,
10 including directing affiliated physicians and surgeons to falsify records to be
11 submitted to insurers for reimbursement. In testimony provided as part of wrongful
12 death lawsuit, one such surgeon, Dr. Ishan Najib Shamaan, explained that Julian
13 Omidis instructed him to sign approximately 600 "preprinted" form letters seeking
14 insurer approval for surgery. These letters were then sent to health insurers to
15 demonstrate that surgery was medically necessary. Dr. Shamaan further testified
16 that (1) he had not actually examined these patients before signing these approval
17 letters; (2) the portion of the letter that supposedly described the patient's particular
18 medical condition was actually pre-printed boilerplate; and (3) he recognized this
19 practice was "fraud." Also in furtherance of their control over medical decision-
20 making, United is informed and believes that the Omidis instruct physicians to
21 perform medically unnecessary surgical procedures, such as liver biopsies and sleep
22 tests, to artificially inflate claims to insurers and third party administrators such as
23 United.

24 49. Upon information and belief, the Omidis have directed or controlled
25 Counterclaim Defendant 1-800-GET-THIN. United is informed and believes that
26 the Omidis controlled Robert Silverman, who at times relevant hereto worked
27 closely with and served as counsel for the Omidis and their enterprise. In turn,
28 United is informed and believes that Robert Silverman served as an executive at 1-

1 800-GET-THIN and operated 1-800-GET-THIN at the direction of and under the
2 control of the Omidis.

3 50. United is informed and believes that each Counterclaim Defendant was
4 the agent, servant, employee, partner and/or joint venture of each of the other
5 Counterclaim Defendants and that the acts of each Counterclaim Defendant were
6 within the scope of such agency, service, and/or employment. In doing the acts and
7 omissions alleged herein, each Counterclaim Defendant acted with the knowledge,
8 permission, and/or consent of every other Counterclaim Defendant, and each
9 Counterclaim Defendant aided, abetted, and/or conspired with the other
10 Counterclaim Defendants in the acts and omissions alleged herein. This
11 interrelated network of health care providers, employees, and administrators will be
12 referred to as the "Omidi Network."

13 51. United is further informed and believes that the Counterclaim
14 Defendants and Does 1 through 200, inclusive, are the successor, predecessor,
15 affiliate, and/or alter egos of the Omidis, and are and have been controlled by the
16 Omidis at all relevant times alleged herein. United is further informed and believes
17 that the Omidis, and each of them, administrated, governed, controlled, managed
18 and directed all of the necessary functions, activities and operations of the above-
19 referenced alter-ego Counterclaim Defendants, including the medical, surgical, and
20 nursing services provided to United members.

21 52. United is further informed and believes that there is a unity of interest
22 between and among the Omidis on the one hand, and the Counterclaim Defendants
23 on the other hand. United is further informed and believes that in light of the unity
24 of interest and control, if the Omidis are not held liable for the debts and obligations
25 of the other Counterclaim Defendants, a fraud and injustice would result upon
26 United. Accordingly, United seeks judgment against each of the above-named
27 Counterclaim Defendants.
28

1 **III. Defendants Conspired to Fraudulently Induce United Members to Seek**
 2 **Lap Band Procedures Through Illegal Promises to Waive Member**
 3 **Responsibility Requirements of the Plan, and Then Submitting False**
 4 **Claims to United.**

5 **A. The Omidis Used the 1-800-GET-THIN Campaign to Promote**
 6 **Their Integrated Network of Lap Band Surgery Centers.**

7 53. The Omidis used the Omid Network to create a lucrative illegal
 8 enterprise that has defrauded the public, United, and the health benefit plans out of
 9 millions of dollars through a web of fraudulent practices, in violation of various state
 10 and federal laws.

11 54. More specifically, upon information and belief, the medical providers
 12 in the Omid Network were ambulatory surgery centers that specialized in
 13 outpatient laparoscopic gastric banding surgeries – a short, outpatient surgery by
 14 which a silicon “Lap Band” is inserted laparoscopically around the patient’s
 15 stomach in order to control hunger. Through these ambulatory surgery centers, as
 16 well as other affiliated clinics situated throughout Southern California,
 17 Counterclaim Defendants also provided ancillary services that were often promoted
 18 and recommended to patients as related to, or in preparation for, the Lap Band
 19 surgery, including lab testing, sleep studies, ultrasounds, and EGDs.

20 55. To funnel patients into their network, the Omidis advertised their
 21 services through their 1-800-GET THIN telephone number throughout Southern
 22 California on billboards, TV, radio, print ads, the internet, and social media. In a
 23 series of articles about the Omid Network, the *Los Angeles Times* referred to the
 24 ads as “blanket[ing] Southern California freeway billboards and broadcast
 25 airwaves,” and stated that the ad campaign was “as inescapable . . . as smog in
 26 summer.” The Omidis advertising campaign touts, among other things, that
 27 prospective patients will receive high-quality Lap Band procedures.

28 56. When a prospective patient calls this telephone number, the call is
 directed to a call center, the operations of which, upon information and belief, are

1 controlled by one or more of the Omidis. Call center employees then direct
2 potential patients to attend “free” informational seminars. United is informed and
3 believes that these “free” informational seminars feature a physician who speaks to
4 the benefits of the Lap Band surgery.

5 57. As described in further depth below, United is informed and believes
6 that at these “free” informational meetings, the Omidis (through their agents)
7 induce potential patients to obtain medical treatments, including Lap Band surgery,
8 through, among other things, illegal promises to waive applicable co-pays or co-
9 insurance, and to accept as full payment for the patients’ services whatever amounts
10 the Counterclaim Defendants obtain from the insurer/benefit plans.

11 58. As discussed in greater depth below, once the Counterclaim
12 Defendants convinced a prospective patient to receive their health services, the
13 Counterclaim Defendants conspired with one another to engage in various
14 fraudulent practices designed to manipulate health benefit plans to pay for services
15 that were not covered by the terms of these plans, as well as submitting grossly
16 excessive claims to United (including over \$140,000 for a service that usually costs
17 between \$14,000-\$20,000), and fraudulently generating and manipulating medical
18 records and claims forms to hide services that would not be Covered Services under
19 the terms of the ERISA Plans.

20 59. In addition to the named Counterclaim Defendants, Does 1-200 are
21 unnamed LLCs and Corporations used by the Omidis to further their conspiracy to
22 defraud patients and insurers by using new business organizations in an attempt to
23 avoid anti-fraud systems used by insurers such as United and to induce United to
24 pay claims that would otherwise not have been paid.

25 60. In fact, these affiliated entities and the Omidis have been the subject of
26 at least nine lawsuits, including several wrongful death and personal injury
27 lawsuits, two whistleblower lawsuits brought by former employees, and one lawsuit
28 for identity theft brought by four physicians formerly affiliated with the Omidis

1 Network. According to the *Los Angeles Times*, the Omidis are currently the subject
2 of investigations by the FBI, the U.S. Food and Drug Administration, the California
3 Department of Insurance, and the Los Angeles Police Department.

4 61. United seeks damages under state law for, *e.g.*, fraud, intentional
5 interference with contractual relationships, and for violations of various state
6 statutes, to recover assets of the health benefit plans that were incorrectly and
7 fraudulently distributed to the Counterclaim Defendants, to apply any such sums as
8 a set off to any sums that would otherwise be covered under the Plans, to seek
9 injunctive relief to preclude the Counterclaim Defendants from continuing their
10 fraudulent behavior, as well as equitable relief estopping the Counterclaim
11 Defendants from profiting from their promises to waive co-pays and patient
12 responsibility obligations from United members.

13 **B. Defendants Misrepresented Charges By Failing To Disclose Their**
14 **Routine Waiver of Coinsurance, Copayment and Other Member**
15 **Responsibility Amounts**

16 62. The typical design of the health benefit plans insured or administered
17 by United provides significant financial incentives for members to use in-network
18 providers, instead of out-of-network providers. These health plans typically have
19 lower Member Responsibility Amounts for services received from in-network
20 providers. For example, a common design of the health plan insured or
21 administered by United specifies 30% or 40% coinsurance for out-of-network
22 services, and either 10% or 20% coinsurance for in-network services. Annual
23 deductibles may also be higher for out-of-network services.

24 63. Members of health plans insured or administered by United are also
25 protected from “balance billing” when they utilize in-network providers, who have
26 agreed to accept as full payment the combination of the contracted rates paid under
27 the health plans, together with the patient’s in-network Member Responsibility
28 Amounts. In contrast, out-of-network providers are generally free to balance bill

1 patients for any difference between their actual charges and the amounts paid under
2 the plan.

3 64. To induce United members to forgo the significant cost-saving benefits
4 of using in-network providers, the Counterclaim Defendants, who were not part of
5 United's provider network, routinely waived all Member Responsibility Amounts,
6 including copayments and co-insurance. Counterclaim Defendants routinely told
7 United members that they would not be responsible for any out-of-pocket costs and
8 that the Counterclaim Defendants would accept as full payment whatever amounts
9 insurance would pay. In this way, Defendants eliminated the financial incentives
10 for United members to use in-network providers by assuring United members that
11 the actual cost to them for Counterclaim Defendants' out-of-network services
12 would be zero. They also induced participants to receive services from the Omid
13 Network when they otherwise would have simply forgone the treatment (even at
14 less expensive in-network providers), found another form of weight loss treatment,
15 or, alternatively, sought treatment from an in-network provider that would (but for
16 the waiver of the Member Responsibility Amounts) have been less expensive.

17 65. Consistent with their promises to United members to waive Member
18 Responsibility Amounts, the Counterclaim Defendants routinely failed to collect
19 such amounts from thousands of United members.

20 66. The routine waiver by the Counterclaim Defendants of Member
21 Responsibility Amounts resulted in a further intentional misrepresentation of the
22 amounts billed on the claim forms submitted by Defendants to United. As
23 described above, the claim forms represent the amount Counterclaim Defendants
24 purport to have charged the United members for their services. When Counterclaim
25 Defendants routinely waived Member Responsibility Amounts, they effectively
26 reduced the amount that they were charging the members for their services by the
27 amount of the waived member responsibility. Counterclaim Defendants did not
28

1 reflect that reduction in the amount billed on their claim forms to United, however,
2 and further failed to disclose to United its routine waiver of member responsibility.

3 67. United is informed and believes that the Counterclaim Defendants
4 were willing to waive Member Responsibility Amounts because they both desired
5 to obtain new patients and because they intended to submit inflated billed charge
6 amounts to United that greatly exceeded both what the Counterclaim Defendants
7 would charge to cash paying patients, and what the majority of providers in the
8 relevant geographical region would charge for the same services. United is
9 informed and believes that Counterclaim Defendants concealed their inflated billed
10 charge amounts by failing to timely invoice the members for any services rendered.
11 Members were shocked to discover the amounts charged when Counterclaim
12 Defendants finally sent bills to members, in many cases, years after the procedures
13 were allegedly performed.

14 68. In addition, most of the relevant health benefit plans provide that no
15 benefit is due under the plan if the United Member is not legally obligated to pay
16 such sums (such as when a provider agrees to accept whatever payment the
17 insurance company will pay as full payment for all services), or if the provider
18 waives Member Responsibility Amounts. Counterclaim Defendants intentionally
19 failed to disclose their routine waiver of these amounts so that they could
20 circumvent these restrictions on benefits and obtain payment for claims based on
21 assignments from the members.

22 69. The following patients, and the specific factual allegations related
23 thereto, serve as exemplars of Counterclaim Defendants' routine practice of
24 promising to waive Member Responsibility Amounts and accept as full payment
25 what a patient's insurance company would pay.
26
27
28

1 **i. United Member 1**¹

2 70. For example, during the times relevant hereto, United Member 1 was
3 covered by an employer sponsored health benefit plan for which United serves as a
4 claims administrator. The terms of this health benefit plan specifically excluded
5 from coverage any “expenses for health services and supplies” for which the
6 member has “no legal responsibility to pay” or for which an out-of-network
7 provider “waives the Copay, Annual Deductible or Coinsurance amounts.”

8 71. Counterclaim Defendants, through Beverly Hills Surgery Center,
9 submitted facility claims to United for a total of \$88,825 for Lap Band surgery
10 provided to United Member 1 on XX, 2010², including the following:

11 a) \$75,890 Lap Band (CPT code 43770), broken down as:

- 12 i. \$32,000 – Recovery Room
- 13 ii. \$31,000 – Operating Room
- 14 iii. \$8,480 – Surgical Tray
- 15 iv. \$2,950 – Anesthesia Supplies
- 16 v. \$750 – Pre-Op Room
- 17 vi. \$710 – Administration of Drugs

18 b) \$12,935 – Anesthesia

19 72. Separately, Skin Cancer & Reconstructive Surgery Specialists LLC
20 submitted a claim to United with billed charges of \$6,500 (CPT code 43770) for
21 professional fees for the Lap Band placed on XX, 2010.

22 73. Despite the fact that Counterclaim Defendants have submitted claims
23 in excess of \$95,000 for United Member 1’s Lap Band surgery, this procedure is a
24 laparoscopic outpatient procedure. According to the NIH, laparoscopic gastric
25

26 ¹ Due to privacy concerns, United has removed all private health information for
27 patients referenced herein and will refer to patients as United Member 1, United
28 Member 2, *etc.*

² All dates of service have been redacted pursuant to HIPAA and will be provided
to Counterclaim Defendants at a future date.

1 banding surgery “is done using a tiny camera that is placed in [the patient’s] belly,”
2 which allows the surgeon to see inside the belly.
3 <http://www.nlm.nih.gov/medlineplus/ency/article/007388.htm>. Generally, the
4 surgeon makes one to five small surgical cuts in the patient’s abdomen and places a
5 camera and the surgical instruments inside these cuts. The surgeon then places a
6 Lap Band around the upper corner of the patient’s stomach to separate it from the
7 lower part. This creates a small pouch that has a narrow opening that goes into the
8 larger, lower part of the patient’s stomach. The surgery does not involve any
9 cutting or stapling inside the belly. The purpose of this surgery is to restrict food
10 intake—when the patient eats after the surgery, the small pouch will fill up quickly,
11 and the patient will feel full after eating just a small amount of food. After the
12 surgery, a physician can adjust the band to make food pass more quickly or slowly
13 through the patient’s stomach.

14 74. Medical records show United Member 1’s Lap Band surgery lasted 32
15 minutes—for which United Member 1 was reportedly charged a \$31,000 operating
16 room fee. Further, despite being charged \$32,000 for use of Beverly Hills Surgical
17 Center’s recovery room, United Member 1’s medical records show that United
18 Member 1 was discharged just 80 minutes after United Member 1’s anesthesia
19 ended.

20 75. The charges submitted for United Member 1’s Lap Band are
21 dramatically higher than the reasonable cost for such services. For example, as
22 described more fully below, United is informed and believes the Counterclaim
23 Defendants charged \$18,000 to patients who paid cash for such services.

24 76. United processed United Member 1’s claims, paying \$1,928.03 for the
25 anesthesia, for which United Member 1’s coinsurance obligation was \$396.05, and
26 paying \$1,904 for the professional fees, for which United Member 1’s coinsurance
27 obligation was \$816. United did not approve any payment on the excessive
28 \$75,890 bill.

1 77. Consistent with their promises to patients to waive Member
2 Responsibility Amounts that were not disclosed to United, the Counterclaim
3 Defendants did not collect the \$1,212.05 in coinsurance owed by United Member 1.
4 United Member 1 has informed United that United Member 1 was told, prior to
5 receiving services from Counterclaim Defendants, that there would be “absolutely”
6 no out-of-pocket expense relating to Defendants’ services. Indeed, United Member
7 1 would never have agreed to undergo Lap Band surgery if United Member 1 had
8 known United Member 1 would be responsible for a co-payment.

9 78. Given Counterclaim Defendants’ undisclosed waiver of Member
10 Responsibility Amounts, under the terms of United Member 1’s plan, United owed
11 Counterclaim Defendants nothing for these services. Thus, the Counterclaim
12 Defendants are liable to reimburse United, on behalf of the relevant plan,
13 \$3,832.03, plus interest and attorneys’ fees. United is also entitled to a declaration
14 that the Counterclaim Defendants are not entitled to receive any payment on the
15 \$75,890 bill for these services. In addition (and alternatively), the Counterclaim
16 Defendants are liable to reimburse United for any other payments made to the
17 Counterclaim Defendants (or costs incurred by United) for services provided to
18 United Member 1 that would not have been provided but for the promises of the
19 Counterclaim Defendants to waive any obligation to pay anything beyond what
20 United would pay.

21 79. Despite inducing United Member 1 to undertake these out-of-network
22 services by falsely assuring no Member Financial Responsibility, United is
23 informed and believes that the Counterclaim Defendants are now improperly
24 seeking to collect the balance of the bills for the XX, 2010 services directly from
25 the patient. Not only should this balance billing not be allowed as it is inconsistent
26 with the Counterclaim Defendants’ prior promises to United Member 1, it also
27 highlights the Counterclaim Defendants’ divergence of interests from those of their
28 patients.

1 **ii. United Member 2**

2 80. During the times relevant hereto, United Member 2 was covered by an
3 employer sponsored health benefit plan for which United serves as a claims
4 administrator. United Member 2's health benefit plan specifically excludes from
5 coverage "Health services for which you have no legal responsibility to pay, or for
6 which a charge would not ordinarily be made in the absence of coverage under the
7 Plan" and also provides that "[i]n the event that a Non-Network provider waives
8 Copayments and/or the Annual Deductible for a particular health service, no
9 Benefits are provided for" such health services.

10 81. Counterclaim Defendants, through San Diego ASC, submitted a claim
11 to United with billed charges of \$13,890 for an EGD procedure (CPT code 43239)
12 performed on United Member 2 on XX, 2010. Separately, Skin Cancer Surgery
13 Specialists submitted claims to United with billed charges of \$650 and \$375 for an
14 office consultation and electrocardiogram on this same date.

15 82. United processed these claims, with the amounts allowed for the
16 office consultation and electrocardiogram being \$300 and \$103, which were
17 supposed to be paid entirely by United Member 2 as part of the out-of-network
18 deductible. United paid \$9,726.60 for the EGD, and United Member 2 was
19 obligated by the terms of the plan to pay \$4,163.40 in coinsurance for the EGD,
20 bringing United Member 2's Member Responsibility Amounts to a total of
21 \$4,566.40 for this date of service.

22 83. However, consistent with their promises to waive Member
23 Responsibility Amounts, which were not disclosed to United, the Counterclaim
24 Defendants affirmatively waived and did not collect the \$4,566.40 owed by United
25 Member 2. Accordingly, under the terms of United Member 2's plan, United owed
26 Counterclaim Defendants nothing for these services. Thus, the Counterclaim
27 Defendants are liable to reimburse United, on behalf of the relevant health benefit
28 plan, \$9,726, plus interest and attorneys' fees. In addition, the Counterclaim

1 Defendants are liable to reimburse United, on behalf of the relevant plan, for any
2 other payments made to the Counterclaim Defendants for services provided to
3 United Member 2 that would not have been provided but for the promises of the
4 Counterclaim Defendants to waive Member Responsibility Amounts, or for which
5 United Member 2 had no legal responsibility to pay.

6 84. Further, even if the terms of United Member 2's plan did not require
7 the Counterclaim Defendants to return all amounts paid for services provided to
8 United Member 2, the Counterclaim Defendants are liable to return all amounts
9 paid for services provided to United Member 2 based on the fraudulent
10 misrepresentation. Alternatively, the excess amounts received for the EGD
11 performed on XX, 2010, due to the inflated billed charge amount submitted for the
12 EGD performed on that date.

13 85. Specifically, the EGD (also known as an Upper GI Endoscopy or
14 Esophagogastroduodenoscopy) for which Counterclaim Defendants sought more
15 than \$13,890 from United, is a short outpatient procedure that Counterclaim
16 Defendant surgical centers commonly bill United for. The National Institutes of
17 Health ("NIH") describes an EGD as a test "to examine the lining of the esophagus
18 (the tube that connects your throat to your stomach), stomach, and first part of the
19 small intestine. It is done with a small camera (flexible endoscope) that is inserted
20 down the throat." <http://www.nlm.nih.gov/medlineplus/ency/article/003888.htm>.
21 NIH states that the patient can usually expect to receive a sedative and a painkiller,
22 a local anesthetic sprayed into the mouth to prevent coughing or gagging when the
23 endoscope is inserted, and an IV to administer medicine during the procedure.
24 After the sedatives have taken effect, the endoscope is inserted through the
25 esophagus to the stomach and duodenum. The doctor examines the lining of the
26 esophagus, stomach, and upper duodenum, and may take a biopsy through the
27 endoscope. Additional treatments, such as stretching or widening a narrow area of
28 the esophagus, may also be done when indicated.

1 86. The Counterclaim Defendants' billed charge of \$13,890 for the EGD
 2 greatly exceeds a reasonable or appropriate charge for this procedure. A reasonable
 3 or appropriate billed charge for this EGD would be less than half of this amount,
 4 with the precise amount to be proven at trial. Thus, alternatively, if the
 5 Counterclaim Defendants are not liable to reimburse United, on behalf of United
 6 Member 2's plan, for the entire amount paid, they are liable to reimburse United for
 7 the excess amount paid due to the submission by the Counterclaim Defendants of
 8 an inflated billed charge and receipt of payment beyond that authorized by the
 9 terms of the plan, including the limitations therein on eligible expenses.

10 **iii. United Member 3**

11 87. During the times relevant hereto, United Member 3 was covered by an
 12 employer sponsored health benefit plan for which United serves as a claims
 13 administrator. United Member 3's benefit plan excludes from coverage "Health
 14 services for which you have no legal responsibility to pay, or for which a charge
 15 would not ordinarily be made in the absence of coverage under the Plan," and
 16 excludes from coverage services "for which a non-Network Provider waives the
 17 Copay, Annual Deductible, or Coinsurance amounts."

18 88. Counterclaim Defendants, through Valencia ASC, submitted a claim to
 19 United with billed charges totaling \$13,790 for an EGD procedure (CPT code
 20 43239) performed on United Member 3 on XX, 2010, including:

- 21 a) EGD (CPT code 43239)
 - 22 i. \$6,000 – Operating Room
 - 23 ii. \$5,000 – Recovery Room
 - 24 iii. \$1,110 – Sterile Supplies
 - 25 iv. \$1,080 – Anesthesia Supplies
 - 26 v. \$350 – Administration of Drugs
 - 27 vi. \$250 – Pre-Op Room

1 89. United processed this claim, and paid \$12,979.16 for the EGD; United
2 Member 3 was obligated by the terms of the plan to pay \$810.84 in coinsurance for
3 the EGD.

4 90. However, consistent with their promises to patients to waive Member
5 Responsibility Amounts, which were not disclosed to United, the Counterclaim
6 Defendants affirmatively waived and did not collect the \$810.84 owed by United
7 Member 3. Accordingly, under the terms of United Member 3's plan, United owed
8 Counterclaim Defendants nothing for the services provided on this date. Thus, the
9 Counterclaim Defendants are liable to reimburse United, on behalf of the relevant
10 plan, \$12,979.16, plus interest and attorneys' fees. In addition, the Counterclaim
11 Defendants are liable to reimburse United, on behalf of the relevant plan, for any
12 other payments made to the Counterclaim Defendants for services provided to
13 United Member 3 that would not have been provided but for the promises of the
14 Counterclaim Defendants to waive Member Responsibility Amounts.

15 91. The Counterclaim Defendants' billed charge of \$13,890 for the EGD
16 greatly exceeds a reasonable or appropriate charge for this procedure. A reasonable
17 or appropriate billed charge for this EGD would be less than half of this amount,
18 with the precise amount to be proven at trial. Thus, alternatively, if the
19 Counterclaim Defendants are not liable to reimburse United, on behalf of United
20 Member 3's plan, for the entire amount paid, they are liable to reimburse United for
21 the excess amount paid due to the submission by the Counterclaim Defendants of
22 an inflated billed charge and receipt of payment beyond that authorized by the
23 terms of the plan, including the limitations therein on eligible expenses.

24 **C. In Addition to Waiving Member Responsibility Amounts, the**
25 **Counterclaim Defendants Performed Unnecessary Services,**
26 **Submitted Fraudulent Bills and/or Inflated Charges to Secure**
27 **Reimbursement for Uncovered Services**

28 92. A number of the health benefit plans administered by United either
exclude coverage for Lap Band surgery or place limitations on coverage for such

1 surgery. When the Counterclaim Defendants encountered such exclusions or
2 limitations, they, on a number of occasions, performed unnecessary services,
3 submitted false bills and inflated charges, and falsely represented patients' BMI, in
4 order to secure reimbursement from United for uncovered services.

5 **i. United Member 4**

6 93. United Member 4 was covered by an employer sponsored health
7 benefit plan for which United served as a claims administrator.

8 94. On XX, 2009, United Member 4 underwent an EGD with Biopsy at
9 the Beverly Hills Surgery Center clinic in preparation for contemplated Lap Band
10 surgery.

11 95. Dr. Arman Feliksovich Karapetyan, M.D.'s report from this same date,
12 labeled "Medical Clearance Form: Initial Preoperative Evaluation," states that this
13 patient "has elected to proceed with the lap band procedure pending the clearances
14 requested by [United Member 4's] surgeon and is here today for a comprehensive
15 pre-operative evaluation and medical clearance in order to proceed with United
16 Member 4's bariatric procedure." Notably, this report further states that United
17 Member 4 did not have any hernias, and that the abdomen was "soft, Non Tender to
18 palpation and Normal BS."

19 **a. United Denies Authorization for Lap Band Surgery in**
20 **2009**

21 96. On XX, 2009, United sent a letter to United Member 4 and Beverly
22 Hills Surgery Center denying coverage for the requested Lap Band procedure
23 because it was not covered under United Member 4's health plan. The letter stated,
24 "Based on the information submitted and your health benefit plan, we determined
25 that the health care services are not covered. The services are not eligible expenses
26 under your plan."
27
28

b. **Counterclaim Defendants Perform A Second EGD in 2010**

97. On XX, 2010, the month after Counterclaim Defendants were notified that United Member 4's Lap Band surgery would not be covered, Counterclaim Defendants Beverly Hills Surgical Center and Skin Cancer Surgery Specialists, together with Dr. Atul Madan, performed a second EGD on United Member 4. The Anesthesia Record for this EGD shows that this patient was under anesthesia for a total of seven minutes, and that the procedure lasted only two minutes. The Recovery Room records reflect that United Member 4 was discharged just over 30 minutes later. The Operative Report now recorded a hiatal hernia with a recommendation for hernia surgery.

98. United is informed and believes that this second, two-minute EGD procedure, which came less than three months after the first EGD, was unnecessary. The second EGD was performed in order to manufacture and document a reason to perform a hiatal hernia repair surgery, which would then allow the Counterclaim Defendants to simultaneously place a Lap Band, and secure reimbursement for the uncovered Lap Band by the submission of bills that contained inflated charges for the hernia repair surgery, but omitted all reference to the simultaneously-performed Lap Band surgery.

99. United, on behalf of United Member 4's health plan, paid \$5,338.54 for the unnecessary services performed on this date.

c. **Counterclaim Defendants Subsequently Perform Combined Lap Band and Hernia Repair Surgery**

100. Medical records and claims records show that subsequently, on XX, 2010, United Member 4 underwent Lap Band and hiatal hernia surgery.

101. Having been notified only months earlier that the proposed Lap Band surgery was not covered by United Member 4's plan, Counterclaim Defendants Beverly Hills Surgery Center and Skin Cancer Surgery Specialists fraudulently

1 omitted from the claim forms submitted for the services provided on XX, 2010 any
2 mention of the surgical Lap Band placement, despite the fact that the Lap Band was
3 the primary purpose for the XX, 2010 treatment. The omission of the Lap Band
4 surgery from these claim forms makes them false and misleading.

5 102. The Counterclaim Defendants submitted such fraudulent claim forms
6 in order to secure reimbursement for the uncovered Lap Band placement through
7 the submission of highly inflated charges for the hernia surgery.

8 103. Counterclaim Defendant Beverly Hills Surgical Center submitted
9 facility claims of \$37,860 under CPT code 39520 for the hernia repair surgery,
10 including:

- 11 a) \$16,500 – Operating Room;
- 12 b) \$15,500 – Recovery Room;
- 13 c) \$2,950 – Anesthesia Supplies;
- 14 d) \$2,150 – Sterile Supplies;
- 15 e) \$410 – Administration of Drugs; and
- 16 f) \$350 – Pre-Op Hiatal.

17 Beverly Hills Surgical Center also billed \$9,350 for the anesthesiologist, and
18 \$2,440 for tissue examination. Counterclaim Defendant Skin Cancer Surgery
19 Specialists billed \$17,500 for professional fees, bringing the total submitted billed
20 charges to \$67,150 for what was, as billed, supposedly only a hernia repair surgery.

21 104. The facility billed charges of \$37,860 submitted by Beverly Hills
22 Surgical Center were highly inflated because they really included charges for the
23 unbilled and uncovered Lap Band surgery. Ordinarily, when the Counterclaim
24 Defendants performed combined Lap Band surgery and hernia repair surgery, and
25 both were covered by the health plan in question, the facility charges for the hernia
26 repair surgery would be much less.

27 105. Relying on the representation that only hernia repair surgery had been
28 performed on XX, 2010, and that the charges submitted were for that surgery only,

1 United processed the facility claim with billed charges of \$37,860 and paid, on
2 behalf of United Member 4's plan, \$20,111.26 to Beverly Hill Surgical Center, with
3 United Member 4's coinsurance obligation being \$888.74. United also paid
4 \$6,008.29 on the other bills for what supposedly was only a hernia repair surgery.

5 106. Consistent with their promises to patients to waive Member
6 Responsibility Amounts, which were not disclosed to United, the Counterclaim
7 Defendants did not, on information and belief, collect the \$888.74 owed by United
8 Member 4.

9 107. As a result of the fraudulent billing by the Counterclaim Defendants
10 for the services provided to United Member 4 on XX, 2010, and the unnecessary
11 services provided earlier on XX, 2010, United Member 4's plan has been damaged
12 in an amount to be proven at trial. In addition, under the terms of United Member
13 4's plan, nothing was owed for XX, 2010 services, due to the waiver of Member
14 Responsibility Amounts. Thus, the Counterclaim Defendants are liable to
15 reimburse United, on behalf of the relevant plan, all amounts paid for the XX, 2010
16 services, as well as any other payments made to the Counterclaim Defendants for
17 services provided to United Member 4, which would not have been provided but for
18 the promises of the Counterclaim Defendants to waive Member Responsibility
19 Amounts.

20 **ii. United Member 5**

21 108. United Member 5 was covered by an employer sponsored health
22 benefit plan for which United served as a claims administrator.

23 109. On XX, 2009, United Member 5 underwent an EGD with Biopsy at
24 the Beverly Hills Surgery Center clinic in preparation for contemplated Lap Band
25 surgery. Dr. Elliot Alpert's Operative Report for this procedure shows that the
26 purpose of this procedure was to "rule out any upper GI lesion in preparation for
27 Lap-Band surgery." The Operative Report also reflects that United Member 5's
28

1 duodenum and stomach, including the fundus, body, and antrum “appeared
2 normal.” This report concluded: “Normal upper GI tract.”

3 **a. United Denies Pre-Authorization for Lap Band**
4 **Surgery**

5 110. Shortly after United Member 5’s EGD, Counterclaim Defendants
6 requested pre-authorization from United to perform a Lap Band surgery. However,
7 United notified “Julian” (whom United is informed and believes to be Julian
8 Omidi) by telephone conference that a Lap Band was not an eligible expense under
9 United Member 5’s plan. United also notified United Member 5 of this
10 determination.

11 **b. Counterclaim Defendants Submit Claims Totaling**
12 **\$24,494 For A Second EGD procedure**

13 111. Similar to United Member 4, after Counterclaim Defendants received
14 notice that United Member 5’s Lap Band surgery would not be covered by the
15 employer-sponsored health plan, Counterclaim Defendants conducted an
16 unnecessary second EGD on XX, 2010. The second EGD was performed in order
17 to manufacture and document a reason to perform a hiatal hernia repair surgery,
18 which would then allow the Counterclaim Defendants to simultaneously place a
19 Lap Band, and secure reimbursement for the uncovered Lap Band by the
20 submission of bills that contained inflated charges for the hernia repair surgery, but
21 omitted all reference to the simultaneously-performed Lap Band surgery.

22 112. United received claims for \$24,494 for the unnecessary EGD and
23 related procedures from Beverly Hills Surgery Center and Skin Cancer Surgery
24 Specialists: \$12,200 for the Beverly Hills Surgery Center facility charge; \$4,244 for
25 the professional endoscopic services of Atul Madan, M.D.; \$3,800 for the
26 anesthesia services of Eva Toth, CRNA; and an additional \$4,250 for an ultrasound
27 conducted by George Mednik, M.D.
28

1 113. United, on behalf of United Member 5's health plan, paid \$14,142.63
2 for the unnecessary services performed on this date of service.

3 c. **Counterclaim Defendants Misrepresent Services**
4 **Provided On Claims In Order to Receive Payment for**
5 **Unauthorized Lap Band Services**

6 114. Medical records and claims records show that on XX, 2010, United
7 Member 5 underwent Lap Band and hiatal hernia surgery.

8 115. Having been notified in 2009 that the proposed Lap Band surgery was
9 not covered by United Member 5's plan, Counterclaim Defendants Beverly Hills
10 Surgery Center and Skin Cancer Surgery Specialists fraudulently omitted from the
11 claim forms submitted for the services provided on XX, 2010, any mention of the
12 surgical Lap Band placement, despite the fact that the Lap Band was the primary
13 purpose of the XX, 2010 treatment. The omission of the Lap Band surgery from
14 these claim forms makes them false and misleading. The Counterclaim Defendants
15 submitted such fraudulent claim forms in order to secure reimbursement for the
16 uncovered Lap Band placement through the submission of highly inflated charges
17 for the hernia surgery.

18 116. As with United Member 4, Counterclaim Defendant Beverly Hills
19 Surgical Center submitted facility claims with billed charges of \$37,860 under CPT
20 code 39520 for the hernia repair surgery for United Member 5, and billed charges
21 of \$2,440 for tissue examination. As with United Member 4, Counterclaim
22 Defendant Skin Cancer Surgery Specialists billed \$17,500 for professional fees for
23 the hernia repair surgery for United Member 5.

24 117. The facility billed charges of \$37,860 submitted by Beverly Hills
25 Surgical Center were highly inflated because they really included charges for the
26 unbilled and uncovered Lap Band surgery. Ordinarily, when the Counterclaim
27 Defendants performed combined Lap Band surgery and hernia repair surgery, and
28 both were covered by the health plan in question, the facility charges for the hernia
repair surgery would be less than \$4,000.

1 118. Relying on the representation that only hernia repair surgery had been
2 performed on XX, 2010, and that the charges submitted were for that surgery only,
3 United processed the facility claim with billed charges of \$37,860 and paid, on
4 behalf of United Member 5's plan, \$22,000 to Beverly Hill Surgical Center. United
5 also paid \$12,727.00 on the other bills for what supposedly was only a hernia repair
6 surgery on XX, 2010.

7 119. Consistent with their promises to patients to waive Member
8 Responsibility Amounts, which were not disclosed to United, the Counterclaim
9 Defendants did not, on information and belief, collect any Member Responsibility
10 Amounts owed by United Member 5.

11 120. As a result of the fraudulent billing by the Counterclaim Defendants
12 for the services provided United Member 5 on XX, 2010, and the unnecessary
13 services provided earlier on XX, 2010, United Member 5's plan has been damaged
14 in an amount to be proven at trial. In addition, under the terms of United Member
15 5's plan, nothing was owed for any services provided to United Member 5 that
16 would not have been provided but for the promises of the Counterclaim Defendants
17 to waive Member Responsibility Amounts.

18 **iii. United Member 6**

19 121. United Member 6 was covered by an employer sponsored health
20 benefit plan for which United served as a claims administrator.

21 122. On XX, 2009, United Member 6 underwent an EGD with biopsies at
22 Counterclaim Defendant Beverly Hills Surgery Center in advance of planned Lap
23 Band surgery. The comments section of the Initial Preoperative Evaluation report
24 dated XX, 2009 signed by Dr. Arman F. Karapetyan, M.D. states that the patient
25 needs to sign informed consent with the surgeon for "off-label placement" of the
26 Lap Band.

27 123. However, United Member 6 did not meet the requirements for
28 coverage of Lap Band services under United Member 6's health plan. The Initial

1 Preoperative Evaluation Report dated XX, 2009 indicates that United Member 6's
 2 height is 5'10" and weight is 235, putting BMI at 33.7. United Member 6's Plan
 3 does not provide coverage for Lap Band surgery for individuals whose BMI is less
 4 than 35. Even if United Member 6 met the plan's BMI requirements, bariatric
 5 services such as Lap Band surgeries "must be received at a designated Center of
 6 Excellence facility to be covered." However, none of the Counterclaim Defendant
 7 surgical facilities has ever been designated a Center of Excellence, as that term is
 8 used in the relevant health plan. Thus, coverage under United Member 6's plan
 9 would not have been available for a Lap Band at the Beverly Hills Surgery Center
 10 even if the BMI requirement of 35 or higher had been satisfied.

11 **a. Counterclaim Defendants Perform Lap Band Surgery**
 12 **On United Member 6 And Bill United \$61,360 For A**
 13 **Hiatal Hernia Surgery**

14 124. Claims submitted by Counterclaim Defendants Beverly Hills Surgery
 15 Center and Skin Cancer Surgery Specialists show that on XX, 2010, United
 16 Member 6 underwent Lap Band and hiatal hernia surgery.

17 125. Because, as the Counterclaim Defendants were aware, United Member
 18 6 was not covered for Lap Band surgery at Beverly Hills Surgical Center,
 19 Counterclaim Defendants Beverly Hills Surgery Center and Skin Cancer Surgery
 20 Specialists fraudulently omitted from the claim forms submitted for the services
 21 provided on XX, 2010 any mention of the surgical Lap Band placement, despite the
 22 fact that the Lap Band was the primary purpose of this treatment. The omission of
 23 the Lap Band surgery from these claim forms makes them false and misleading.
 24 The Counterclaim Defendants submitted such fraudulent claim forms in order to
 25 secure reimbursement for the uncovered Lap Band placement through the
 26 submission of highly inflated charges for the hernia surgery.

27 126. As with United Members 4 and 5, Counterclaim Defendant Beverly
 28 Hills Surgery Center submitted facility claims with billed charges of \$37,860 under
 CPT code 39520 for the hernia repair surgery for United Member 6, and

1 professional claims with billed charges of \$6,000 for the anesthesiologist fees. As
2 with United Members 4 and 5, Counterclaim Defendant Skin Cancer Surgery
3 Specialists billed \$17,500 for professional fees for the hernia repair surgery for
4 United Member 6.

5 127. The facility billed charges of \$37,860 submitted by Beverly Hills
6 Surgical Center were highly inflated because they really included charges for the
7 unbilled and uncovered Lap Band surgery. Ordinarily, when the Counterclaim
8 Defendants performed combined Lap Band surgery and hernia repair surgery, and
9 both were covered by the health plan in question, the facility charges for the hernia
10 repair surgery would be less than \$4,000.

11 128. Relying on the representation that only hernia repair surgery had been
12 performed on XX, 2010, and that the charges submitted were for that surgery only,
13 United processed the facility claim with billed charges of \$37,860 and paid, on
14 behalf of United Member 6's plan, \$20,225.12 to Beverly Hills Surgery Center for
15 facility charges. United also paid \$11,744.89 on the other bills for what supposedly
16 was only a hernia repair surgery on this date of service. To further conceal their
17 fraud, Counterclaim Defendants submitted an operative report to United relating to
18 the hernia repair procedure. However, in subsequent submissions of medical
19 records, Counterclaim Defendants submitted to United a second, separate operative
20 report showing that a Lap Band had been placed in addition to the hernia repair.

21 129. Consistent with their promises to patients to waive Member
22 Responsibility Amounts, which were not disclosed to United, the Counterclaim
23 Defendants did not, on information and belief, collect any Member Responsibility
24 Amounts owed by United Member 6.

25 130. As a result of the fraudulent billing by the Counterclaim Defendants
26 for the services provided United Member 6 on XX, 2010, United Member 6's plan
27 has been damaged in an amount to be proven at trial. In addition, under the terms
28 of United Member 6's plan, nothing was owed for any services provided to United

1 Member 6 that would not have been provided but for the promises of the
2 Counterclaim Defendants to waive Member Responsibility Amounts.

3 131. The fraudulent billing for United Member 6 continued for services
4 after the XX, 2010 Lap Band surgery. Bills were submitted to United for the
5 services of Dr. Madan for outpatient office visits in XX, XX, and XX, 2010.
6 Medical records show, however, that the purpose of each of these visits was to
7 provide a Lap Band adjustment. United Member 6 would not have sought these
8 outpatient services had he not received the Lap Band. Defendants falsely
9 represented the nature of these visits in an attempt to obtain payment for
10 unauthorized Lap Band services. United Member 6's plan has been damaged by
11 this fraud because of the payments made for such services, in an amount to be
12 proven at trial, which would not have been paid had they been accurately
13 represented as uncovered Lap Band services.

14 **iv. Counterclaim Defendants Fraudulently Inflated Patients'**
15 **BMI In An Attempt To Justify Lap Band Services**

16 132. Medical records show that Counterclaim Defendants also submitted
17 fraudulent medical records to United that manipulated the height and weight of
18 individual patients in order to, upon information and belief, inflate the patient's
19 BMI and, in some cases, get prior authorization for Lap Band surgery.

20 133. For example, medical and claim records show that on XX, 2010,
21 United Member 7 was examined to determine candidacy for a Lap Band. At the
22 time, the provider recorded United Member 7's height as 5'3" and her weight at
23 200 pounds, resulting in a calculated BMI of 35.4. Dr. Au Lee signed United
24 Member 7's Bariatric Surgery History & Physical Examination Form and
25 recommended that United Member 7 undergo a Lap Band procedure.

26 134. However, records further show that on XX, 2010, the day United
27 Member 7 underwent Lap Band surgery, Counterclaim Defendants measured
28 United Member 7 as standing a full two inches taller—at 5'5"—and weighing 204

1 pounds, resulting in a calculated BMI of just 33.9. This height is consistent with a
2 declaration submitted by United Member 7 in earlier litigation stating that United
3 Member 7 stood at 5'5". In addition, at the time of the Lap Band procedure, United
4 Member 7's driver's license stated that United Member 7 was 5'6".

5 135. Had Dr. Au recorded United Member 7's true height of at least 5'5"
6 during the pre-operation examination, he would have calculated United Member 7's
7 BMI at 33.3. Further, had United Member 7's BMI been accurately measured and
8 recorded, United Member 7 would not have qualified for bariatric surgery benefits
9 under United Member 7's health plan, and United would not have been responsible
10 for any expenses associated with the Lap Band surgery.

11 136. As a result of the fraudulent BMI calculation, United Member 7
12 underwent a Lap Band procedure at Valley Surgical Center on XX, 2010. The
13 surgical center subsequently submitted facility claims of at least \$79,990, in
14 addition to charges for professional services. United processed these claims, paying
15 Valley Surgical Center \$79,490, on behalf of United Member 7's health plan, with
16 United Member 7 being responsible for a \$500 deductible. United also paid \$1,785
17 to West Hills Surgery LLC for the XX, 2010 Lap Band. Consistent with their
18 promises to patients to waive Member Responsibility Amounts, which were not
19 disclosed to United, the Counterclaim Defendants did not, on information and
20 belief, collect any Member Responsibility Amounts owed by United Member 7.
21 Under the terms of United Member 7's plan, nothing was owed for any services
22 provided to United Member 7 that would not have been provided but for the
23 promises of the Counterclaim Defendants to waive Member Responsibility
24 Amounts.

25 137. Following surgery, United Member 7 had numerous adjustments and
26 other Lap Band-related procedures such as a barium swallow and fluoroscopy. Had
27 United Member 7's BMI been accurately measured and recorded during the initial
28 consultation, United Member 7 would not have qualified for a bariatric surgery

1 benefit under United Member 7's health plan. As a result of the fraudulent BMI
2 calculation by the Counterclaim Defendants, United Member 7's plan has been
3 damaged in an amount to be proven at trial. Moreover, United would not be
4 responsible for any post-operative expenses incurred.

5 138. In another example, medical and claim records also show that
6 Counterclaim Defendants fraudulently inflated United Member 6's BMI. Indeed,
7 on XX, 2009 during the pre-operative examination, Counterclaim Defendants
8 measured United Member 6 as standing 5'10" and weighing 235 pounds. Although
9 Counterclaim Defendants did not calculate United Member 6's BMI that day, they
10 would have learned that United Member 6's BMI was only 33.7, thus disqualifying
11 United Member 6 from any bariatric surgery benefits under United Member 6's
12 plan.

13 139. Even though United Member 6 did not qualify for bariatric surgery
14 benefits, Counterclaim Defendants scheduled and performed a Lap Band procedure
15 on XX, 2010. In the corresponding operative note, Dr. Madan erroneously
16 recorded United Member 6's height as a full inch shorter—5'9"—and calculated
17 United Member 6's BMI at 40. While there is no weight recorded for United
18 Member 6 on the day of surgery, United Member 6's pre-operative weight, 235,
19 combined with United Member 6's new height, results in a BMI of just 34.7. Even
20 assuming United Member 6 stood 5'9", United Member 6 would have had to *gain*
21 36 pounds in preparation for weight loss surgery in order to reach a BMI of 40.

22 140. At the time of the surgery, United Member 6 carried a driver's license
23 that listed United Member 6 as standing 5'10" and weighing 220 pounds, a
24 height/weight combination that translates to a BMI of 31.6.

25 141. As described in full detail above, Counterclaim Defendants
26 subsequently billed United more than \$60,000 in total charges related to the Lap
27 Band surgery (that was fraudulently billed as hiatal hernia surgery) and for several
28 Lap Band follow-up examinations and adjustments.

1 142. United Members 6 and 7 are exemplars that are representative of
2 Counterclaim Defendants' routine and ongoing fraudulent billing practices
3 designed to obtain payment from United for unauthorized services.

4 143. Members have also informed United that they received bills from the
5 Counterclaim Defendants for services that never happened or from clinics where
6 they were never treated; that they were double billed by the Counterclaim
7 Defendants for services they received only once; that they were billed for office
8 visits that actually took place over the phone; and that they were billed for extended
9 appointments that in fact were much shorter.

10 144. In sum, the Counterclaim Defendants engaged in a pattern and practice
11 of submitting false and fraudulent bills to United that (a) were fraudulently inflated
12 due to the Counterclaim Defendants' waiver of co-pays and other patient
13 responsibility obligations; (b) were illegally induced by the Counterclaim
14 Defendants' agreement to waive copays and other patient responsibility obligations,
15 which resulted in the United members receiving either medically unnecessary care,
16 or care that would have been provided by an in-network provider at lower cost to
17 the health benefit plans or United had this waiver not occurred; (c) submitting
18 claims to United for medical services rendered, where the Counterclaim Defendants
19 knew that the health plans would not make payments for charges where the
20 provider waived the copays and other Member Responsibility Amounts; (d)
21 fraudulently inflating the cost of certain procedures, in situations where the
22 Counterclaim Defendants were informed that the United member did not have
23 coverage for the Lap Band surgery; and (e) attempting to mask the cost and expense
24 of Lap Band surgeries by labeling the procedures as another, purportedly medically
25 necessary and covered, procedure, and submitting falsified medical records to
26 further cover up the fraud.

27
28

1 v. **United Made Payments That Were Greater Than the**
2 **Counterclaim Defendants' Normal Rates or the Usual,**
3 **Customary, and Reasonable Charges for the Same**
4 **Procedures.**

5 145. During the time relevant to this action, the Counterclaim Defendants
6 were out-of-network providers with respect to United, meaning United did not have
7 a contract with the Counterclaim Defendants governing reimbursement for the
8 services they rendered to United members.

9 146. As noted earlier, all or virtually all health benefit plans administered
10 by United limit reimbursement of out-of-network providers to a specified
11 percentage of "eligible" or "usual, customary and reasonable" charges.

12 147. Beginning in 2008, the Counterclaim Defendants routinely submitted
13 excessive and unreasonable charges to United for a variety of procedures and visits,
14 including but not limited to Lap Band and other endoscopy procedures (CPT codes
15 43239, 43770 & 47562), in an attempt to induce United to authorize payment to the
16 Counterclaim Defendants for amounts well in excess of the "eligible" or "usual,
17 customary and reasonable" charges covered under the terms of the plans
18 administered by United as claims administrator.

19 148. For example, the Counterclaim Defendants, including Almont ASC,
20 Beverly Hills Surgery Center, Modern Institute, and Valley Surgical Center,
21 routinely submitted bills to United for Lap Band placements (CPT code 43770)
22 with charge amounts in excess of \$60,000, which is more than 300% greater than a
23 reasonable charge for this procedure. The Counterclaim Defendants felt free to
24 submit such excessive and unreasonable charges, having told their patients that they
25 would not have to pay copays or otherwise pay for the care being provided.

26 149. Further, United is informed and believes that Counterclaim Defendants
27 billed Lap Band patients willing to pay cash substantially less than patients with
28 insurance. Indeed, upon information and belief, Counterclaim Defendants charged
29 cash patients only \$18,000 for Lap Band surgery while they simultaneously charged

1 some patients covered by health plans more than \$90,000 or \$100,000 in facility
2 charges and professional fees for such surgery. United is further informed and
3 believes that former Lap Band manufacturer Allergan estimated that a Lap Band
4 procedure should cost between \$12,000 and \$20,000.

5 150. The Counterclaim Defendants succeeded in their attempts to induce
6 United to authorize payment to the Counterclaim Defendants for amounts well in
7 excess of the “eligible” or “usual, customary and reasonable” charges covered
8 under the terms of the plans administered by United as claims administrator.

9 151. For example, for CPT codes 43239, 43770 & 47562, the aggregate
10 overpayments received by the Counterclaim Defendants exceed \$10,000,000.
11 Accordingly, if the waiver of Member Responsibility Amounts did not eliminate
12 altogether the obligation to make any payment to the Counterclaim Defendants
13 under the terms of the plans administered by United as claims administrator, the
14 Counterclaim Defendants would still be liable to reimburse United, on behalf of the
15 plans administered by United as claims administrator, for such overpayments, with
16 the precise amount of overpayments to be proven at trial.

17 152. Because these overpayments were in excess of what was required to be
18 paid under the terms of the plans administered by United, United seeks restitution
19 of these overpayments.

20 **vi. United Paid Numerous Claims In Good Faith Based On**
21 **Defendants’ Misrepresentations**

22 153. United reasonably relied on the misrepresentations contained on the
23 claim forms submitted by Counterclaim Defendants, and in good faith paid not only
24 the claims of the exemplars above, but also thousands of claims based on those
25 misrepresentations. Just as with the exemplars, Counterclaim Defendants
26 submitted intentionally misleading and fraudulent claims that: (i) inflated the
27 claimed amount because of Counterclaim Defendants’ waiver of co-pays and other
28 Member Responsibility Amounts; (ii) were for medical procedures that (as

Counterclaim Defendants knew) were not eligible for coverage under the health benefit plans because of the Counterclaim Defendants decision to waive Member Responsibility Amounts, and promise to accept whatever United paid as full payment for the services; (iii) failed to disclose that co-payments and other forms of patient responsibility had been waived; (iv) sought payment for unnecessary services; (v) masked the cost and expense of Lap Band surgeries by labeling the procedures as a different, covered expense and submitting inflated claims for the covered procedures; and (vi) sought exorbitant payments. Counterclaim Defendants also submitted intentionally misleading and fraudulent claims for medical procedures that they knew would not be covered by the health plans because of their decision to waive co-pays and other patient responsibilities.

FIRST CAUSE OF ACTION
(Fraud)
(Against All Counterclaim Defendants)

154. United realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 153, inclusive, hereinabove.

155. Counterclaim Defendants did knowingly and willfully execute a scheme and artifice to defraud United by submitting, and collecting on, fraudulent health insurance claims, and to obtain by means of false and fraudulent pretenses, representations and promises, money and property owned by, and under the custody and control of United, in connection with the delivery of or payment for health care benefits, items, or services.

156. Counterclaim Defendants had knowledge of the wrongful scheme and intended to defraud United, despite their legal duty to submit timely and accurate insurance claims.

157. In furtherance of the scheme and artifice to defraud, Counterclaim Defendants submitted:

1 a) Fraudulent claims that failed to disclose that Defendants had
2 waived some or all of the member's co-pay, deductible, or other financial
3 responsibility;

4 b) Fraudulent claims that misrepresented the nature of the
5 procedure performed, or in some cases, completely failed to disclose that the
6 member received a gastric Lap Band;

7 c) Fraudulent claims that inflated the member's BMI in order to
8 receive secure coverage for the Lap Band surgery; and

9 d) Fraudulent claims that demanded exorbitant fees far in excess of
10 the usual and customary rate.

11 158. Defendants' scheme and artifice to defraud succeeded in inducing
12 United to pay these fraudulent claims. As a direct and proximate cause of this
13 scheme, United paid millions in fraudulent claims.

14 159. Counterclaim Defendants made false representations of material fact to
15 United in submitting claim forms to United. Specifically, Counterclaim Defendants
16 submitted intentionally misleading and fraudulent claims that: (i) inflated the
17 claimed amount because of Counterclaim Defendants' waiver of co-pays and other
18 patient responsibility obligations; (ii) failed to disclose the waived Member
19 Responsibility Amount; (iii) inflated the cost of the procedures by failing to
20 discount the cost in the amount of the waived Member Responsibility Amount; (iv)
21 inflated the cost of certain covered procedures, in situations where the
22 Counterclaim Defendants were informed that the United member did not have
23 coverage for the Lap Band surgery; and (iv) masked the cost and expense of Lap
24 Band surgeries by labeling the procedures as another, purportedly medically
25 necessary and covered procedure. Counterclaim Defendants also submitted to
26 United intentionally misleading and fraudulent claims and medical records for
27 medical procedures that they knew would not be covered by the health plans
28 because of their decision to waive co-pays and other patient responsibilities.

1 160. At the time Counterclaim Defendants submitted these materially
2 misleading and fraudulent claims and medical records to United, Counterclaim
3 Defendants knew the falsity of such representations. Counterclaim Defendants (for
4 example) knew at the time they submitted such claims that the Counterclaim
5 Defendants had not actually charged the members the amounts stated in the claims
6 as the billed charge and that the members had not agreed to pay such amounts if
7 Counterclaim Defendants did not receive payment from United.

8 161. Counterclaim Defendants submitted the claims to United with the
9 intent to induce United to rely on the false statements as to the amount charged to
10 the members and, therefore, pay to Counterclaim Defendants an amount that was
11 (in the aggregate) millions in excess of the actual amount charged to the members
12 or the rate regularly charged by the Counterclaim Defendants to cash-paying
13 patients. United reasonably relied on the false statements contained in the claims
14 submitted by Counterclaim Defendants as to the amount charged to the members.
15 Based upon such reliance, United paid to Counterclaim Defendants amounts based
16 on the billed charges in the claims, when, in fact, the Counterclaim Defendants had
17 not actually charged such amounts to the members.

18 162. As a result of Counterclaim Defendants' fraudulent conduct, United
19 has been damaged by paying to Counterclaim Defendants amounts far in excess of
20 the amount actually charged to the members. The total amount of such damage will
21 be proven at trial.

22 163. Counterclaim Defendants further made false representations of
23 material fact to United in submitting claim forms and medical records to United that
24 sought payment for unauthorized Lap Band surgeries and adjustments by
25 concealing the Lap Band treatments as other treatments, *i.e.*, hernia surgeries and
26 general office visits.

27 164. At the time Counterclaim Defendants submitted these materially
28 misleading and fraudulent claims and medical records to United, Counterclaim

1 Defendants knew the falsity of such representations. Counterclaim Defendants
2 knew that the claims seeking payment for hernia surgery and/or office visits
3 *actually* sought payment for unauthorized Lap Band treatments. Counterclaim
4 Defendants submitted the claim forms and falsified medical records to United with
5 the intent to induce United to rely on the false statements as to the services provided
6 to the members and, therefore, pay to Counterclaim Defendants an amount that was
7 tens of thousands of dollars in excess of the actual amount charged for hernia
8 surgery and follow-up visits.

9 165. United reasonably relied on the false statements contained in the
10 claims submitted by Counterclaim Defendants as to the amount charged to the
11 members. Based upon such reliance, United paid to Counterclaim Defendants
12 amounts based on the billed charges in the claims, when, in fact, the Counterclaim
13 Defendants had not actually charged such amounts to the members. As a result of
14 Counterclaim Defendants' fraudulent conduct, United has been damaged by paying
15 to Counterclaim Defendants amounts far in excess of the amount actually charged
16 to the members. The total amount of such damage will be proven at trial.

17 166. United is informed and believes that Counterclaim Defendants acted
18 intentionally in conscious disregard of the rights of United, with malice, oppression,
19 and fraud in that Counterclaim Defendants knew that its acts and conduct, as
20 alleged hereinabove, were fraudulent and unjustified and would result in severe
21 financial and economic injury to United. Accordingly, United is entitled to an
22 award of punitive damages against Counterclaim Defendants for the sake of
23 example and by way of punishing Counterclaim Defendants. The amount of such
24 punitive damages should be determined at the time of trial of this action.

25 **SECOND CAUSE OF ACTION**
26 **(Unfair Business Practices, Business & Professions Code § 17200)**
27 **(Against All Counterclaim Defendants)**

28 167. United realleges and incorporates herein by reference each and every
allegation contained in paragraphs 1 through 166, inclusive, hereinabove.

169. In addition to being false and fraudulent, the amounts purported to be charged by the Counterclaim Defendants were unconscionable in that they are so exorbitant and wholly disproportionate to the services performed as to shock the conscience of physicians of ordinary prudence practicing in the same community.

THIRD CAUSE OF ACTION
(Conspiracy to Commit Fraud)
(Against All Counterclaim Defendants)

172. For many years prior, and continuing through the present, Counterclaim Defendants did knowingly and willfully combine, conspire, confederate, and agree with each other and with others, known and unknown, to execute a scheme and artifice to defraud United by submitting and collecting on fraudulent health insurance claims and medical records, and to obtain by means of false and fraudulent pretenses, representations and promises, money and property owned by, and under the custody and control of United, in connection with the delivery of or payment for health care benefits, items, or services.

1 173. Counterclaim Defendants orchestrated the wrongful scheme and
2 intended to defraud United, despite their legal duty to submit timely and accurate
3 insurance claims.

4 **Purpose of the Conspiracy**

5 174. It was a purpose of the conspiracy for Counterclaim Defendants to
6 unlawfully enrich themselves by, among other things, submitting intentionally
7 misleading and fraudulent claims that:

- 8 a) Inflated the claimed amount because of Counterclaim Defendants'
9 waiver of co-pays and other patient responsibility obligations;
- 10 b) Omitted a disclosure regarding the waived co-pays and patient
11 responsibilities;
- 12 c) Inflated the cost and concealed the performance of certain
13 procedures, in situations where the Counterclaim Defendants were
14 informed that the United member did not have coverage for the Lap
15 Band surgery;
- 16 d) Masked the cost and expense of Lap Band surgeries by labeling the
17 procedures as another, purportedly medically necessary and
18 covered procedure;
- 19 e) Concealed the fact that Counterclaim Defendants knew that the
20 submitted claim was not covered by the health plans because of
21 their decision to waive co-pays and other patient responsibilities.

22 **Manner and Means of the Conspiracy**

23 175. The manner and means by which Counterclaim Defendants and other
24 co-conspirators sought to accomplish the object and purpose of the conspiracy
25 included, among others, the following:

- 26 a) United is informed and believes that the Omidis conspired to create
27 TopSurgeons, Inc., Top Surgeons, LLC, and 1-800-GET-THIN,
28

1 LLC as organizations to fraudulently market and sell Lap Band
2 surgeries.

- 3 b) Top Surgeons, Inc., Top Surgeons, LLC, 1-800-Get-Thin, LLC
4 and/or other corporate entities owned, operated, or controlled by the
5 Omidis employs call center staff to encourage prospective patients
6 to attend “free” orientations, consultations, and examinations.
- 7 c) These initial “free” meetings with prospective patients are
8 ostensibly to determine whether the prospective patient is a suitable
9 candidate for Lap Band surgery. In furtherance of the conspiracy,
10 United is informed and believes that the primary purpose of these
11 initial sessions is to determine whether the prospective patient
12 carries adequate health insurance.
- 13 d) Although the initial orientation, consultation, and examination was
14 “free” to the prospective patient, Counterclaim Defendants submit
15 insurance claims for as much as \$600 to cover the cost of these
16 sessions.
- 17 e) Once a prospective patient is identified and cleared to undergo
18 surgery, the Omidis, and the corporate entities that they own,
19 manage, and/or control, conspire to refer these patients to
20 physicians who are under contract with Top Surgeons, Inc., Top
21 Surgeons, LLC, 1-800-Get-Thin, LLC, or other co-conspirators
22 known or unknown. United is informed and believes that these
23 physicians perform subsequent examinations and procedures at
24 Counterclaim Defendant surgical centers that are owned, managed,
25 operated, or controlled by the Omidis.
- 26 f) In furtherance of the conspiracy, United is informed and believes
27 that the Omidis instruct their affiliated physicians to perform
28 medically unnecessary, costly, and unauthorized surgical

1 procedures, such as EGDs, as a means to artificially and
 2 fraudulently inflate claims to insurers such as United.

3 g) Following a surgical procedure, Counterclaim Defendants submit
 4 or cause to be submitted fraudulent insurance claims to United for
 5 unnecessary medical procedures or procedures that are not fully
 6 documented. Counterclaim Defendants also submit insurance
 7 claims and/or medical records that fraudulently misrepresent a
 8 member's BMI or other pertinent information that bears upon
 9 United's obligation to pay benefits under the member's health plan.

10 176. Counterclaim Defendants' conspiracy succeeded in inducing United to
 11 pay these fraudulent claims. As a direct and proximate cause of this conspiracy,
 12 United paid millions in fraudulent claims.

13 **FOURTH CAUSE OF ACTION**
 14 **(Intentional Interference with**
 15 **Contractual Relationships)**
 16 **(Against All Counterclaim Defendants)**

17 177. United realleges and incorporates by reference Paragraphs 1 through
 18 176 as though fully set forth herein.

19 178. As alleged above, the Counterclaim Defendants were aware that health
 20 benefit plans generally include provisions precluding participants from accepting
 21 services from providers in return for a waiver of Member Responsibility Amounts.
 22 By nevertheless inducing United members to accept services with the Counterclaim
 23 Defendants by promises that they would waive patient responsibilities and accept
 24 whatever payment their health benefit plan would pay – in most instances without
 25 the United member even knowing that this relationship was illegal or a violation of
 26 Plan terms – the Counterclaim Defendants caused the United members to violate
 27 the terms of their health benefit plans. By doing so, Plaintiffs' illegally interfered
 28 with the contract between United members, United (as their insurer), and the Plans.

1 179. Further, by accepting assignments from, and acting as authorized
2 representatives of the United members, and then submitting false or inflated bills
3 for services, the Counterclaim Defendants illegally interfered with the contractual
4 relationship between United and its members

5 180. United therefore seeks all damages incurred as a result of the
6 Counterclaim Defendants' intentional interference, including (but not limited to)
7 damages in the amount of overuse of health plan benefits resulting from the illegal
8 inducement, as well as damages in the amount of the fraudulent billings.

9
10 **FIFTH CAUSE OF ACTION**
11 **(Restitution under ERISA § 502(a)(3)**
 (Against All Counterclaim Defendants)

12 181. United realleges and incorporates by reference Paragraphs 1 through
13 180 as though fully set forth herein.

14 182. The ERISA Plans are employee health and welfare benefit plans that
15 are insured or administered by United, and for which United provides
16 administrative services. The ERISA Plans are non-governmental plans that exist,
17 are established, and maintained by employers for the benefit of their respective
18 employees, and do not fall within any ERISA safe-harbor provisions.

19 183. In connection with its duties as a claims administrator, United is a
20 fiduciary as that term is defined in ERISA § 3(21) for many of the ERISA Plans.
21 As reflected in administrative services agreements executed between United and the
22 Plan, United's authority includes the authority to review claims, and also to file suit
23 to recover overpayments that are made to patients and medical providers, whether
24 those payments result from fraudulent behavior or otherwise. As such, for these
25 Plans, United has standing to sue under ERISA § 502(a)(3), to obtain equitable
26 relief to redress violations of such ERISA Plans, or to enforce the terms of the
27 ERISA Plans.
28

1 184. The ERISA Plans in question typically include language requiring that
2 any overpayments that are made to patients, or (on their behalf) to providers must
3 be returned. For example, one typical ERISA Plan states that “[t]he Plan reserves
4 the right to recover any payments made by the Plan that were . . . [m]ade in error;
5 or . . . [m]ade to any Covered Person or any party on a Covered Person’s behalf
6 where the Plan Sponsor determines the payment to the Covered Person or any party
7 is greater than the amount payable under this Plan. The Plan has the right to
8 recover against Covered Persons if the Plan has paid them or any other party on
9 their behalf.”

10 185. As alleged above, Counterclaim Defendants have engaged in a scheme
11 of submitting intentionally misleading and fraudulent claims that: (i) inflated the
12 claimed amount because of Counterclaim Defendants’ waiver of Member
13 Responsibility Amounts; ((ii) were for medical procedures that (as Counterclaim
14 Defendants knew) were not eligible for coverage under the health benefit plans
15 because of the Counterclaim Defendants decision to waive Member Responsibility
16 Amounts, and promised to accept whatever United paid as full payment for the
17 services; (iii) failed to disclose that co-payments and other forms of patient
18 responsibility had been waived; (iv) sought payment for unnecessary services; (v)
19 masked the cost and expense of Lap Band surgeries by labeling the procedures as a
20 different, covered expense and submitting inflated claims for the covered
21 procedures; and (vi) sought exorbitant payments. Based upon the inflated claims
22 submitted to United, Counterclaim Defendants received amounts in excess of the
23 amounts that they actually charged for those services, and that would have been
24 incurred by United members.

25 186. Further, even to the extent that the Counterclaim Defendants did not
26 knowingly and intentionally submit false or inflated bills to United, Counterclaim
27 Defendants submitted claims of Plan Members of ERISA Plans pursuant to
28 contractual assignments received from those Plan Members. By doing so,

1 Counterclaim Defendants stood in the shoes of the plan members, accepting the
2 terms of the ERISA Plans and submitting their claims subject to those terms.
3 Further, by knowingly accepting payments from the Plan, the Counterclaim
4 Defendants became bound by the Plan's terms and conditions, including conditions
5 related to overpayments. The ERISA Plans, by their terms, require the return of
6 overpayments and amounts that were erroneously paid. Thus, even to the extent
7 that the Counterclaim Defendants did not intentionally overcharge United, United is
8 still entitled to equitable relief to enforce the terms of the Plan and recover these
9 overpayments.

10 187. As a result of the fraudulent scheme to inflate their charges and waive
11 in full or in part Member Responsibility Amounts, Counterclaim Defendants
12 induced United on its own behalf and on behalf of ERISA Plans to overpay each
13 and every claim submitted by Counterclaim Defendants. United is entitled to
14 recover its overpayments and seeks restitution of the amounts it overpaid. Among
15 other things, United seeks damages in the total amount of the payments made to
16 Counterclaim Defendants on behalf of patients to whom the Counterclaim
17 Defendants promised that they would waive any Member Responsibility Amounts.
18 United also (and alternatively) seeks to recover the amounts paid to the
19 Counterclaim Defendants resulting from their fraudulent invoices, such as for
20 unnecessary care, or invoices that mask the actual services provided. United further
21 seeks to recover for sums paid in excess of the usual, customary, or reasonable fees,
22 for payments that exceed the cost of Counterclaim Defendant's actual, normal
23 charges, or payments that were otherwise not consistent with the terms of the Plan.

24 188. United is entitled to the imposition of a constructive trust on the sums
25 it paid to Defendants on its own behalf and on behalf of ERISA Plans in reliance on
26 the fraudulent claims Counterclaim Defendants submitted to United, as well as on
27 any profits or income made by Counterclaim Defendants through the use of those
28 amounts held in constructive trust. United is also entitled to an Order restoring to

1 United on its own behalf and on behalf of ERISA Plans the sums held in
2 constructive trust by Counterclaim Defendants. Upon information and belief,
3 United believes that the sums that the Plaintiffs overcharged United are still in the
4 possession, custody or control of the Counterclaim Defendants.

5 189. Further, an equitable lien, either implied or by agreement, exists on the
6 amounts United overpaid or paid in error on its own behalf and on behalf of ERISA
7 Plans to Counterclaim Defendants in reliance on the fraudulent claims based on the
8 language in the ERISA Plans requiring return of overpayments and amounts paid in
9 error. Upon information and belief, United believes that the sums that the Plaintiffs
10 overcharged United are still in the possession, custody or control of the
11 Counterclaim Defendants.

12 190. Restitution and trust remedies include, among other things, return of
13 the amounts paid by United based on the fraudulent claims. United seeks return of
14 monies paid to Counterclaim Defendants on behalf of the ERISA Plans that
15 constituted overpayments or erroneous payments.

16 **SIXTH CAUSE OF ACTION**
17 **(For Declaratory and Injunctive Relief**
18 **under ERISA § 502(a)(3))**
(Against All Counterclaim Defendants)

19 191. United realleges and incorporates by references Paragraphs 1 through
20 190 as though fully set forth herein.

21 192. United acts as claims fiduciary for many of the ERISA Plans and has
22 standing to sue under ERISA § 502(a)(3) for injunctive relief to redress violations
23 of such ERISA Plans or to enforce any provisions of these ERISA Plans.

24 193. Defendants have engaged in a scheme to defraud United into paying
25 amounts to Counterclaim Defendants in excess of the amounts owed under the
26 ERISA Plans, as discussed above.

27 194. United is entitled to a judicial declaration pursuant to ERISA
28 § 502(a)(3) that Counterclaim Defendants are not entitled to any additional

1 payments from United or the ERISA Plans unless and until they reimburse United
2 and the ERISA Plans for all amounts they wrongfully obtained as a result of their
3 scheme to defraud United.

4 195. United further seeks a declaratory judgment decreeing the right, duties
5 and obligations of the parties under the ERISA Plans.

6 196. United also seeks an order enjoining Counterclaim Defendants from
7 billing United for amounts for which the Counterclaim Defendants had indicated
8 they would waive Member Responsibility Amounts or otherwise accept payments
9 from United or the Plans as full compensation for their services, or alternatively for
10 an order enjoining the Counterclaim Defendants from billing United/the ERISA
11 Plans for amounts which do not reflect the failure to collect Member Responsibility
12 Amounts, or that in any other way artificially inflate amounts.

13 197. United also seeks a constructive trust or equitable lien on the monies
14 currently held by Counterclaim Defendants as a result of the overpayments by
15 United, an order restoring the overpayments currently being held by Counterclaim
16 Defendants in constructive trust or pursuant to an equitable lien, and other
17 appropriate equitable relief.

18 198. Finally, United requests injunctive relief precluding the Counterclaim
19 Defendants from profiting from their promise to waive Member Responsibility
20 Amounts, or from seeking to recover sums that would be inconsistent with those
21 promises.

22 **PRAYER FOR RELIEF**

23 WHEREFORE United prays for the following relief:

24 1. That judgment be entered in favor of United on its counterclaims
25 against the Counterclaim Defendants in an amount exceeding \$75,000.

26 2. That the Court issue equitable relief requiring the Counterclaim
27 Defendants to return or replay all sums that were fraudulently or inappropriately
28 paid to the Counterclaim Defendants.

1 3. For an injunction precluding the Defendants from submitting future
2 false or fraudulent requests for payment including all requests for payment related
3 to patients to whom the Counterclaim Defendants agreed they would waive
4 Member Responsibility Amounts or would otherwise not balance bill the patient.

5 4. For an order and injunction precluding the Counterclaim Defendants
6 from profiting from their illegal promises to waive Patient Responsibility Amounts,
7 including by seeking to enforce claims inconsistent with those promises.

8 5. For declaratory relief adjudicating the amounts owed to United, and
9 that United is not obligated to pay for care or services that were illegally induced by
10 the Counterclaim Defendants' promises to waive Member Responsibility Amounts,
11 as well as a set off from any sums due to Plaintiffs.

12 6. That the Court award reasonable attorneys' fees and costs to United.

13 7. Such other legal and equitable relief as this Court deems just and
14 proper.

15 Dated: May 15, 2014

WALRAVEN & WESTERFELD LLP

16
17 /s/ Bryan S. Westerfeld
By: BRYAN S. WESTERFELD

18 Attorneys for Defendant UnitedHealth
19 Group, Inc., and Counterclaim
20 Plaintiffs/Defendants United Healthcare
21 Services, Inc., United Healthcare
 Insurance Company, and OptumInsight,
 Inc.

22 Dated: May 15, 2014

DORSEY & WHITNEY LLP

23
24 /s/ R.J. ZAYED
By: R.J. ZAYED

25 *Pro Hac Vice Admission Pending*
26 Attorneys for Defendant UnitedHealth
27 Group, Inc., and Counterclaim
28 Plaintiffs/Defendants United Healthcare
 Services, Inc., United Healthcare
 Insurance Company, and OptumInsight,
 Inc.

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF ORANGE } ss

I am employed in the County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 101 Enterprise, Suite 350, Aliso Viejo, CA 92656.

On May 15, 2014, I served the foregoing document(s) described as

COUNTERCLAIM

on all interested parties in this action as follows (or as on the attached service list):

DARON L. TOOCH E-Mail: dtooch@health-law.com
BRYCE WOOLLEY bwoolley@health-law.com
HOOPER, LUNDY & BOOKMAN, P.C.
1875 Century Park East, Suite 1600
Los Angeles, California 90067-2517


☒ BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

AND

☒ (VIA U.S. MAIL) I served the foregoing document(s) by U.S. Mail, as follows: I placed true copies of the document(s) in a sealed envelope addressed to each interested party as shown above. I placed each such envelope with postage thereon fully prepaid, for collection and mailing at Walraven & Westerfeld LLP, Aliso Viejo, California. I am readily familiar with Walraven & Westerfeld LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 15, 2014, at Aliso Viejo, California.


Kim Sullivan